

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Bonneville Power Administration</b>	)	
	)	<b>Docket No.</b> _____
<b>PacifiCorp</b>	)	
	)	
<b>Idaho Power Company</b>	)	

**PETITION OF BONNEVILLE POWER ADMINISTRATION, PACIFICORP,  
AND IDAHO POWER COMPANY FOR DECLARATORY ORDER RELATING  
TO THE DEVELOPMENT OF  
GRID WEST, A PROPOSED TRANSMISSION PROVIDER**

The Bonneville Power Administration ("Bonneville"), PacifiCorp and Idaho Power Company respectively request a declaratory order on a conceptual proposal pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (the "Commission") Rules of Practice and Procedure, 18 CFR § 385.207(a)(2) (2004), with respect to certain issues of critical importance to the further development of Grid West, a proposed independent transmission provider. Specifically, Petitioners request a declaratory order with respect to the following questions:

1. Assuming Grid West seeks approval under Section 205 of the Federal Power Act to offer regional transmission service pursuant to an open access tariff, but not as an Order 2000 RTO, will the Commission treat Grid West's application as one that must satisfy the open access requirements of Order 888 (that is, offering services consistent with or superior to the *pro forma* OATT requirements) rather than the requirements for RTO status?
2. Does Grid West's governance structure as embodied in its Operational Bylaws allow it to satisfy the independence requirements of Order 2000?

3. What is the Commission's position regarding transmission owners' withdrawal rights?
  - a. Will the Commission approve a contract between Grid West and Bonneville that allows Bonneville to withdraw as a participating transmission owner without Commission approval?
  - b. Will the Commission clarify that a participating transmission owner that is a public utility would be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable?
4. If Grid West becomes a public utility that sells transmission service but not as an RTO, will the Commission provide assurances that it will not thereafter require Grid West to comply with Order 2000 requirements or Standard Market Design approaches?
5. As a matter of policy, will the Commission accept a provision in Grid West's agreements with Bonneville and other transmission owners providing that certain terms identified as critical to transmission owners' participation will be protected from subsequent Commission-mandated change based on, in Bonneville's case, Bonneville's statutory requirements and the doctrine of sub-delegation, and for all transmission owners the application of the *Mobile-Sierra* standard to certain contract provisions?
6. If Grid West becomes a public utility that sells transmission service but not as an RTO, is Commission policy sufficiently flexible to accommodate participating transmission owners continuing as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West?
7. Will the Commission acknowledge that Bonneville's participation in Grid West, as a participating transmission owner, does not provide the Commission with any authority to modify Bonneville's existing transmission agreements?
8. Will the Commission support implementation, for an indefinite duration, of license plate rates and the application of charges to through and out transactions?

Because the Commission's guidance on these issues will be critical to stakeholder consideration of the Grid West proposal in late summer and to Petitioners' decisions in September about whether to support further development of the proposal, Petitioners request the Commission to respond no later than July 1, 2005.

## **I. COMMUNICATIONS**

All written communications regarding the petition should be addressed to the following individuals who should be placed on the official service list of the proceeding:

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## **II. EXECUTIVE SUMMARY**

The development of Grid West is subject to four decision points. Decision Point 1 occurred on December 9, 2004 when the RTO West board of directors adopted the Grid West Articles of Incorporation and Developmental Bylaws and restructured RTO West into Grid West, a Washington nonprofit membership corporation. The next decision point, Decision

PAGE 3 - PETITION OF BONNEVILLE POWER ADMINISTRATION, PACIFICORP, AND IDAHO POWER COMPANY FOR DECLARATORY ORDER RELATING TO THE DEVELOPMENT OF GRID WEST, A PROPOSED TRANSMISSION PROVIDER

Point 2, relates to seating an independent Grid West Developmental Board and funding its work. Decision Point 2 is expected to occur in September 2005. It is critical that Petitioners understand the Commission's views and intentions on the issues raised in this Petition prior to determining whether to commit additional funds for further development of the Grid West proposal.

**A. Non-Order 2000 Public Utility.** If Grid West becomes an operating entity, it is expected to offer transmission services as an independent transmission provider pursuant to a transmission tariff that is identical or superior to the Order 888<sup>1</sup> *pro forma* open access transmission tariff ("OATT"). Grid West will not attempt to become recognized by the Commission as a regional transmission organization because, among other reasons, the contemplated regional services will not satisfy all the characteristics and functions of Order 2000.<sup>2</sup> As a result, Petitioners seek to confirm their understanding that the Commission will review Grid West's Section 205 filing to ensure that Grid West satisfies the general obligations of a transmission provider and not condition its approval on Grid West becoming an RTO or subsequently order Grid West to adopt Order 2000 or Standard Market Design ("SMD") elements.

**B. Governance.** Petitioners request the Commission's concurrence with their belief that Grid West's governance structure is independent. While seeking RTO status is not

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<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part*, *Transmission Access Policy Study Group, et al v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (No. 00-568 (in part) and 00-809) and *cert. denied, id.* (No. 00-800) (U.S. Feb. 26, 2001).

<sup>2</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 & 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

currently planned for Grid West, the Grid West Operational Bylaws require a Commission determination that Grid West's governance structure as set forth in the bylaws allows the corporation to satisfy the independence requirements of Order 2000.<sup>3</sup> The governance structure embodied in the Operational Bylaws is substantially the same as the transparent decision-making process approved by the Commission in the RTO West proceeding.<sup>4</sup> The most significant differences involve new accountability mechanisms provided to Grid West members, including the ability to require some board proposals to obtain a supermajority vote of the trustees before they may be implemented, and a reduction in the number of member representatives' votes required to elect and remove trustees. Petitioners believe that this governance structure will be responsive to regional stakeholders while maintaining the ability to produce decisions that reflect the interests of the region as a whole.

**C. Contracts Between Grid West and Transmission Providers.** Grid West will own no transmission facilities, and thus its ability to provide transmission services is dependent on its ability to contract for the right to offer transmission services using participating owners' facilities. Petitioners request the Commission's concurrence that, if Bonneville contracts with Grid West, it will honor a provision in Bonneville's contract with Grid West allowing Bonneville to withdraw its facilities from Grid West without Commission approval. Bonneville must be mindful that its statutory obligations will continue even after it becomes a Grid West participating transmission owner. Bonneville cannot surrender a termination right that may be critical for meeting those obligations. Since Bonneville is not considered a public utility, as defined in the Federal Power Act, it is important for the Commission to confirm that it will not attempt to prevent Bonneville

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<sup>3</sup> Because it is possible, though not planned, that transmission owners may decide to request a declaratory order seeking RTO status at some future point, and stakeholders desired certainty that such a request would not require a change in the governance structure.

<sup>4</sup> *Avista Corp. et al*, 100 FERC ¶ 61,274 at P 36 (2002).

from exercising a contractual right to terminate its contract with Grid West and withdraw its facilities.

In addition Petitioners seek guidance on the withdrawal rights of the transmission owners that are public utilities. These owners and their state regulators need assurance that a voluntary decision to allow Grid West to use their transmission facilities for regional service is not an irrevocable decision. While these public utility owners are mindful that any service Grid West offers, as well as any post-termination service provided by the owners, must be provided at rates, and under terms and conditions, that are just, reasonable and not unduly discriminatory, they believe that the necessary corollary of voluntary participation in a regional transmission entity is the ability to withdraw.

Furthermore, Petitioners request the Commission's concurrence that it will apply the precedent of allowing *Mobile-Sierra* clauses in the contracts enabling Grid West to utilize transmission facilities. In the context of RTOs, the Commission has accepted various *Mobile-Sierra* clauses in the transmission agreements between RTOs and participating transmission owners. While Grid West will control the tariff by which it will offer transmission services, transmission owners must be able to rely on critical aspects of the arrangement between themselves and Grid West not being changed without their consent, except upon the extraordinary showing required by the *Mobile-Sierra* standard.

**D. Transmission Tariff.** In the context of RTOs, the Commission has indicated that transmission providers must take service under the RTO tariff in order to satisfy pre-existing service obligations. Since Grid West is not seeking RTO status and

because of substantial concerns of some transmission customers, Grid West's market structure does not contain this requirement. The transmission provider will continue to directly serve its pre-existing obligations under their terms, including the provider's own OATT. However, Grid West will receive all transmission schedules and establish markets for the voluntary resale of transmission rights. When new transmission service is needed either because the transmission customer's existing contract expired (without rollover), existing rights are insufficient to meet demand, or the customer wishes to participate in new transactions, Grid West will sell those transmission rights. More specific information about these concepts is contained on the Grid West website ([www.gridwest.com](http://www.gridwest.com)), but the specific details will not be created until after Decision Point 2. Petitioners request confirmation that the Commission will be receptive to the concepts under development within Grid West and will not insist that Grid West follow the RTO requirements.

In past orders, the Commission has recognized that it does not have jurisdiction over Bonneville's pre-existing contracts. To mollify fear that Bonneville's participation in Grid West may establish such Commission authority over Bonneville's contracts, Petitioners request the Commission to acknowledge that Bonneville participation does not provide the Commission with any authority to modify Bonneville's existing transmission agreements.

Petitioners also seek confirmation from the Commission that it will be receptive to pricing mechanisms that avoid significant cost shifts within the region. In the context of other RTOs, the Commission has accepted license plate pricing but allowed its use only during a defined transition period. In the context of RTO West, the Commission

approved license plate pricing (known within RTO West and Grid West as the “Company Rate”) for an eight-year period.<sup>5</sup> At the end of that period, the RTO West board would decide whether to continue Company Rate pricing or propose something else. In the Grid West context, the Company Rate concept<sup>6</sup> would be applied for the first eight years and would continue unless and until the Operational Board elected to adopt, through a formalized process with the members, another pricing approach. Making the Company Rate approach the default gave important comfort to certain load-serving entities with substantial concerns about disadvantageous cost shifts. Since the Grid West proposal will not be filed under Order 2000, Petitioners desire confirmation from the Commission that license plate pricing or other appropriate mechanism consistent with the “Company Rate” concept embodied in the Grid West bylaws is acceptable and that a maximum duration will not be imposed.

Finally, Petitioners seek confirmation that the Commission will be receptive to a Grid West pricing proposal that would collect a portion of the embedded cost of the system from throughput and export transactions. The Grid West working proposal, based on physical rather than financial transmission rights, does not propose a transition period after which Grid West charges would cease to be collected from these transactions.

### **III. BACKGROUND.**

**A. Description of the Petitioners.** Bonneville is a self-financed federal power marketing administration within the United States Department of Energy.

Pursuant to its own statutory framework, it owns and operates a significant portion of the bulk electric transmission system in the Pacific Northwest. It is not a public utility under

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<sup>5</sup> *Id.* at P 133 (2002).

<sup>6</sup> The Grid West pricing group is still working on how the Company Rate approach can be implemented in a physical rights model.

Section 201(e) of the Federal Power Act, although the Commission does have limited authority under other law to approve Bonneville's rates<sup>7</sup> and order the agency on a case-by-case basis to provide transmission service.<sup>8</sup> Bonneville has received the Commission's approval of its open access tariff under the "safe harbor" provision of Order 888.<sup>9</sup> Bonneville has been an active participant in previous efforts, described below, to establish a regional transmission organization in the region, both as an ISO (IndeGO) and as an RTO (RTO West).

PacifiCorp is an investor-owned utility providing retail electric service within the states of California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp is a public utility under Section 201 of the Federal Power Act, a transmission provider, and a wholesale marketer of electric power. PacifiCorp also operates more than 15,000 circuit miles of transmission, making it one of the largest investor-owned open-access transmission systems in the United States. PacifiCorp is an active participant in the development of Grid West and also supported previous efforts to establish a regional transmission organization in the region.

Idaho Power Company is an investor-owned utility providing retail electric service within the states of Idaho and Oregon. Idaho Power is a public utility under Section 201 of the Federal Power Act, a transmission provider, and a wholesale marketer of electric power. Idaho Power is an active participant in the development of Grid West and also supported previous efforts to establish a regional transmission entity in the Northwest.

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<sup>7</sup> See 16 USC § 839e (2000).

<sup>8</sup> See 16 USC § 824k(i) (2000).

<sup>9</sup> See *United States Dept. of Energy—Bonneville Power Admin.*, 80 FERC ¶ 61,119 (1997), *order on reh'g*, 81 FERC ¶ 61,165 (1997); *United States Dept. of Energy—Bonneville Power Admin.*, 86 FERC ¶ 61,278 (1999); *United States Dept. of Energy—Bonneville Power Admin.*, 106 FERC ¶ 61,125 (2004).

**B. The Northwest's Efforts to Create an ISO and RTO.** For more than eight years, Petitioners and other transmission owners<sup>10</sup> in the Pacific Northwest and adjacent areas have been exploring proposals to form an independent regional transmission organization. The purpose of such an organization would be to manage and operate the multiple transmission systems as a single system in order to gain commercial and operational efficiency, improved planning and grid expansion, and increased reliability of the interconnected grid. The Commission has encouraged the establishment of regional transmission organizations through its Order 2000, and several have been formed in other parts of the country.

After the first proposal called IndeGO collapsed for lack of support in 2000, the transmission owners formed and funded RTO West, a nonprofit Washington corporation that served as a vehicle for the joint effort to develop an RTO. Each of the funding transmission owners had a representative on the RTO West board of directors. Initial development efforts produced a conceptual proposal for an operational entity intended to conform to the Commission's Order 2000 requirements. The Commission issued declaratory orders approving significant portions of the RTO West conceptual proposal.<sup>11</sup> However, this proposal was criticized by some regional stakeholders as being too FERC-driven, focused on problems that did not exist in the RTO West region to any significant degree and divorced from the region's operational characteristics. They argued that some Order 2000 solutions were not appropriate to the region's unique hydro-thermal power system and would consequently impose unnecessary costs and threaten pre-existing arrangements that worked. Some stakeholders continued to have strong reservations

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<sup>10</sup> Avista Corporation, British Columbia Transmission Corporation, NorthWestern Energy, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific/Nevada Power Company.

<sup>11</sup> *Avista Corp. et al*, 100 FERC ¶ 61,274 (2002).

about a perceived lack of accountability of an independent RTO West board to regional interests. Based largely on their experience with the California energy crisis, they feared the imposition of problematic market mechanisms and uncontrolled costs by trustees who lacked any significant connection to the region. Consequently, the transmission owners decided they lacked the necessary public support to move forward.

The Commission is well aware of the long-standing anxiety in the Pacific Northwest concerning ISOs and RTOs. Significant customer anxieties persist concerning (i) mandatory, centralized energy markets and their potential manipulation; (ii) the use of financial transmission rights in the Pacific Northwest; (iii) the exposure of existing (often nonjurisdictional) transmission service to cost-shifting and other changes ordered by the Commission; (iv) the likelihood of implementation costs overwhelming any potential benefits; and (v) increased jurisdictional reach of the Commission over currently nonjurisdictional facilities and entities.<sup>12</sup> Based on the experience to date, Petitioners have chosen to pursue Grid West rather than continuing efforts to establish an RTO because they expect that any filing of an Order 2000 compliant RTO proposal would be adamantly opposed by multiple utility transmission customers.

**C. Creation of Grid West.** For the past 18 months, representatives of the electric power industry in the four Pacific Northwest states, British Columbia, Nevada, Utah and Wyoming focused on developing a third proposal, Grid West, for improved management and planning of the interconnected electric power transmission system

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<sup>12</sup> Different transmission owners have different perspectives about the concerns raised by regional parties. However, Petitioners agree that their ability to move forward with an independent transmission entity has been substantially affected by these concerns.

within that area. These representatives<sup>13</sup> comprise a stakeholder advisory group referred to as the Regional Representatives Group (“RRG”) and have met generally on a monthly basis to develop the proposal and assess progress of various work groups. In the Grid West effort, the RRG focused its efforts on identifying and addressing the region's real transmission problems rather than attempting to adapt FERC RTO structure to the region. The characteristics and functions of an RTO set out in Order 2000 were dropped as the necessary measures of an effective proposal.

The RRG assigned a small task force to find common ground among competing proposals for resolution of agreed-upon regional transmission problems. This effort led to the development of a scaled-back conceptual proposal, known as the “RRG Platform Group Regional Proposal.”<sup>14</sup> Based on the region's unique characteristics and needs, the proposal would make significant progress towards resolving the region's transmission problems. Some of the components of the earlier RTO West proposal were incorporated to capture the efficiencies and greater reliability benefits expected from those components while other RTO West components were not incorporated because of the concerns by some about their associated risks or their likely cost. Mechanisms for additional accountability to stakeholders were added to the governance structure, the use of markets was significantly scaled back, and consolidation of control areas was made voluntary.

Even though the proposal did not include all required characteristics and functions of Order 2000, it did contain many of the Day One characteristics and functions within

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<sup>13</sup> Transmission owners, transmission-dependent utilities, generators, power marketers, end-use customers, state and provincial regulators, and environmental and energy conservation groups. See [http://www.gridwest.org/Doc/RRGList\\_UpdatedDec72004.pdf](http://www.gridwest.org/Doc/RRGList_UpdatedDec72004.pdf).

<sup>14</sup> See Grid West website, [http://www.gridwest.org/RRG\\_PlatformInput.htm](http://www.gridwest.org/RRG_PlatformInput.htm)

the voluntary consolidated control area. The proposal allowed for the independent entity to add additional mechanisms and features over time, but recommended that procedural protections be incorporated in the bylaws to establish more board accountability for, and provide members a significant voice in, those decisions.

In December 2003, the RRG accepted the task force proposal as worthy of further development,<sup>15</sup> and directed the RRG's Bylaws Work Group to produce new bylaws to reflect the revised governance proposals. In February 2004, a three-year, incremental decision process was developed to guide the development of the governance, technical and contractual elements of the proposal.<sup>16</sup> Four major decision points were identified, potentially culminating in a decision by the transmission providers to accept or reject contracts negotiated and offered by the independent entity. Failure to move forward at any decision point would terminate the entire process.

After significant interaction with the RRG on its work, the Bylaws Work Group presented proposals for both Developmental<sup>17</sup> and Operational<sup>18</sup> Bylaws to the RRG on June 30, 2004. The RRG determined the proposed bylaws were "good enough" to be posted for regional review and comment. The RRG ultimately received six comments.<sup>19</sup> On July 14, 2004, Bonneville formally asked for the written views of its customers and constituent groups on whether the proposed bylaws were workable, provided for adequate cost control, and assured sufficient accountability of the independent board to regional interests. Bonneville received 65 written comments from state public utility

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<sup>15</sup> See [http://www.gridwest.org/Doc/MessageDocument\\_RegionalProposal\\_Feb32004.pdf](http://www.gridwest.org/Doc/MessageDocument_RegionalProposal_Feb32004.pdf).

<sup>16</sup> See attached developmental timeline, Attachment A.

<sup>17</sup> The Developmental Bylaws govern Grid West activities during its developmental phase prior to offering transmission services.

<sup>18</sup> The Operational Bylaws govern Grid West activities once the corporation transitions to the operational stage in which it has the authority to offer transmission services.

<sup>19</sup> The posted bylaws and the comments are available at [http://www.gridwest.org/RRG\\_GridWestBylaws.htm](http://www.gridwest.org/RRG_GridWestBylaws.htm).

commissions, public power customers, members of the Northwest congressional delegation, public interest groups and other interested stakeholders.<sup>20</sup> Bonneville also sponsored a review of the proposed bylaws by the National Academy of Public Administration (“NAPA”), an independent, nonprofit organization chartered by Congress to identify emerging issues of governance and to help federal, state, and local governments improve their performance.<sup>21</sup> Based on public comments and NAPA’s review, on September 23, 2004, Bonneville presented to the RRG a list of 35 recommended revisions to the draft bylaws to strengthen regional accountability, cost control and workability. The vast majority of these recommendations were addressed by the RRG in a manner acceptable to Bonneville and incorporated in revised bylaws.<sup>22</sup>

The RRG also formed a technical workgroup known as the Transmission Services Liaison Group (the “TSLG”) which later engaged the services of the Structure Consulting Group LLC to refine the RRG Platform Group Regional Proposal. The TSLG is producing a series of technical papers describing the Grid West structure and services; drafts may be found on the Grid West website.<sup>23</sup>

**D. Grid West Decision Path.** The first decision point (Decision Point 1) occurred on December 9, 2004 when the nine-member RTO West board of directors restructured RTO West into Grid West through the adoption of the revised Articles of

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<sup>20</sup> All comments are posted at the Bonneville website at <http://www.bpa.gov/corporate/business/restructuring>.

<sup>21</sup> See [www.napawash.org](http://www.napawash.org). NAPA’s report, “Grid West: An Assessment of the Proposed Governance Structure” is posted at the Bonneville website referenced in footnote 20.

<sup>22</sup> See list of examples in Bonneville’s “Close Out on Grid West Bylaws” at the Bonneville website referenced in footnote 20.

<sup>23</sup> See Grid West website for TSLG materials, [http://www.gridwest.org/TSLG\\_Main.htm](http://www.gridwest.org/TSLG_Main.htm). These papers should be available after May 2, 2005, and will be presented during workshops currently scheduled for May 25 and 26, 2005 at the Sheraton Portland Airport Hotel in Portland, Oregon.

Incorporation and Developmental Bylaws developed by the RRG.<sup>24</sup> The RTO West board of directors became the Grid West Interim Board, which has the authority to facilitate the transition to a membership corporation, seek out potential independent candidates for Developmental Board trustee positions, and continue work on the initial design for Grid West operations including a cost estimate. Membership applications began to be processed and various work groups were established to develop the technical elements of the proposal in order to facilitate a subsequent, high-level evaluation of its costs, benefits and workability.

The next decision point (Decision Point 2) is planned to occur in September 2005. The question to be decided is whether to elect and seat the five independent Developmental Board trustees who would guide the non-FERC jurisdictional corporation through the remaining two developmental decision points, including the negotiation of transmission agreements with the transmission owners.<sup>25</sup> A critical factor at Decision Point 2 will be an assessment of the products of the various RRG work groups as to whether the Grid West proposal is likely to be workable and produce net benefits to the area encompassed within the proposed Grid West footprint.<sup>26</sup> If, on the basis of this assessment, Bonneville and at least two investor-owned transmission owners determine to move forward and fund continued development, the Grid West members will elect five

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<sup>24</sup> See adopted Developmental Bylaws at

[http://www.gridwest.org/Doc/GWDevBylaws\\_SignedDec102004.pdf](http://www.gridwest.org/Doc/GWDevBylaws_SignedDec102004.pdf). Adoption of the Developmental Bylaws also “locked down” the Operational Bylaws from being amended until after the Operational Board is seated. Developmental Bylaws, Section 3.2(vii).

<sup>25</sup> Developmental Bylaws, Sections 7.1.13(iii)-(v) and 7.2.7.

<sup>26</sup> The Grid West footprint (“Geographic Area”) is comprised of the portions of Alberta and British Columbia and of the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming that are electrically within the Western Interconnection, together with any additional geographic territory within the state of California that is encompassed by the control areas of the Bonneville Power Administration, PacifiCorp, and Sierra Pacific Company as of the effective date of the Operational Bylaws. Operational Bylaws, Section 1.1.17.

independent trustees to the Developmental Board to oversee the remainder of the development process, and the Interim Board will terminate.

Following Decision Point 2, the independent Developmental Board will engage in negotiations with the transmission owners to develop transmission agreements for use of the transmission owners' systems. The third decision point (Decision Point 3) involves a decision by the independent Developmental Board about whether to offer transmission agreements to the transmission owners. This decision must occur no later than 12 months from the first meeting of the Developmental Board.<sup>27</sup> If the independent Developmental Board elects not to offer contracts, the board must adopt, and submit to a vote of the members, a resolution to dissolve the corporation.

If the Developmental Board does offer contracts to the transmission owners, the final decision point (Decision Point 4) involves two steps. First, the Grid West members must vote in support of the board's adoption of the Operational Bylaws. Second, Bonneville and at least two contiguous investor-owned transmission owners must decide to accept the offer.<sup>28</sup> After positive action at both steps Grid West will adopt its operational bylaws and take any remaining steps necessary to enable Grid West to offer regional transmission services. Decision Point 4 must occur no later than 12 months from the date of the offer<sup>29</sup> and is likely to occur sometime in 2007.

#### **IV. DESCRIPTION OF GRID WEST**

In moving past Decision Point 1, Petitioners and other transmission owners funding Grid West's development determined there was sufficient regional consensus to support further developmental efforts. However, Bonneville and others noted that long-

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<sup>27</sup> Developmental Bylaws, Section 13.1.

<sup>28</sup> Developmental Bylaws, Section 7.2.5.

<sup>29</sup> Developmental Bylaws, Section 13.2.

standing risks and concerns still existed that would impede development past Decision Point 2 unless addressed positively. These concerns included (i) protection and preservation of pre-existing transmission agreements; (ii) practical rights to terminate participation as a participating transmission owner; (iii) application of rate structures that minimize cost shifts; and (iv) mitigating the risk that the Commission would use its jurisdictional authority over Grid West to impose subsequent changes to Grid West contracts or tariffs in the face of regional opposition. In addition, Bonneville and other transmission owners required an early indication, prior to committing to significant additional expenditures at Decision Point 2, about whether the Commission would find that the Grid West Operational Bylaws, with their accountability mechanisms, satisfied the independence requirements of Order 2000 and whether the absence of certain other required components of Order 2000 would be fatal to the Commission's acceptance of the Grid West proposal. Bonneville indicated it would seek assurances from the Commission that the Commission's jurisdictional framework and approach toward RTO development is sufficiently flexible to accommodate a regional transmission provider of the sort envisioned by the RRG. To this end, Petitioners next describe the regional arrangements that are under consideration, including governance structure and operational characteristics of Grid West, and pose a series of questions concerning the Commission's commitment to support key concepts necessary to realize and maintain regional accountability and control.

**A. Governance Structure.** Grid West's operational stage governance structure is embodied in its Operational Bylaws<sup>30</sup> that would become effective only if

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<sup>30</sup> See Attachment B.

Grid West moved to the operational stage. This governance description is provided to permit the Commission to determine whether the governance structure set forth in the Operational Bylaws would satisfy the independence requirements for Order 2000. This determination is a condition precedent for Grid West to begin offering transmission and related services in the operational stage but is needed now to determine whether additional funds should be dedicated to development of Grid West.

The Grid West governance structure is modeled on the RTO West governance structure previously approved by the Commission.<sup>31</sup> The changes made to the RTO West bylaws were the result of a productive collaboration among the members of the RRG.

1. **Members.** The five-member classes in Grid West are: (a) Major Transmitting Utilities (“MTU”); (b) Transmission-Dependent Utilities (“TDU”); (c) Generators, Power Marketers, Large Generating End-Use Consumers, and Others; (d) End-Use Consumers; and (e) State and Provincial Energy Authority/Tribes/Certain Public Interest Groups. These classes closely track the class structure previously incorporated into the RTO West bylaws.

The membership qualification for the MTU Member Class is now based on the amount of transmission pole miles (minimum of 550) rather than an owner's percentage of aggregate book value.<sup>32</sup> Transmission pole miles provide a basis for including the nine RTO West filing utilities in the MTU class without mandating MTU membership for certain publicly owned utilities that might otherwise qualify under a book value criterion. The new definition does allow the MTU membership to include in the class those TDU members that execute a transmission agreement with Grid West.

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<sup>31</sup> *Avista et al*, 100 FERC ¶ 61,274 at P. 36

<sup>32</sup> Operational Bylaws, Section 1.1.26.

The membership qualifications for the TDU Member Class have been slightly modified to ensure that the class is populated only by governmental or consumer-owned entities that provide transmission or distribution services within the Geographic Area.<sup>33</sup> This limitation was important to the publicly owned utility members of the RRG.

The Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class has been modified from the RTO West Nonutility Entities Member Class to allow Large Generating End-Use Consumers to elect membership in either this class or in the End-Use Consumers Class.<sup>34</sup> RRG representatives of Large Generating End-Use Consumers insisted that these entities, having significant interests both as generators and as end-use consumers, have a membership choice driven by the primary interests of individual members.

The End-Use Consumer Member Class has been modified from the RTO West Retail Customer class to limit membership of individual retail customers to bundled and unbundled Large End-Use Consumers, *i.e.*, load within the Geographic Area equal to or greater than five average megawatts.<sup>35</sup> Smaller retail consumers would now be represented only by Consumer Advocates, but their voting power has been increased to one-half of the class voting power.<sup>36</sup>

Membership qualifications for the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class are much the same as in the RTO West bylaws, but now it allows for five members in the State and Provincial Energy Authority Sub-class if there are five or more members. The Tribes Sub-class has

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<sup>33</sup> Operational Bylaws, Section 1.1.44.

<sup>34</sup> Operational Bylaws, Section 5.2.2(iii)(a).

<sup>35</sup> Operational Bylaws, Section 1.1.12.

<sup>36</sup> Operational Bylaws, Sections 1.1.6 and 5.14.3(iv)(c).

been expanded to include entities beyond tribal regulatory authorities, and membership in the Certain Public Interest Group Sub-class (previously the Unaligned Entities subclass) is now limited to 501(c)(3) environmental or energy-related organizations.<sup>37</sup>

Much like with the RTO West governance structure, the member voting power within Grid West is structured so that, in general, each of the five member classes in Grid West has the same voting power as the other member classes. Members of Grid West have two kinds of voting power:<sup>38</sup> (a) the power to vote on “yes and no” kinds of questions (such as whether to amend the Grid West bylaws or dissolve the corporation), and (b) the power to elect (and remove) class or subclass representatives to the Members Representative Committee (“MRC”). Notably, Grid West members are provided significant control over corporate costs because they will constitute a majority on the Grid West Budget Committee that prepares and recommends to the Operational Board the proposed annual budget and forecast of out-year funding and commitments.<sup>39</sup> Members also participate in mandatory advisory votes when the Grid West budget proposed by the Operational Board exceeds prior projections by 15 percent,<sup>40</sup> other advisory votes called by the Operational Board and Board Advisory Committee activities.<sup>41</sup> Section 5.1 of the Operational Bylaws contains a full listing of members' rights.

The Grid West bylaws provide members with another board accountability mechanism. Grid West members may determine that an Operational Board decision, or

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<sup>37</sup> Operational Bylaws, Sections 1.1.46 and 1.1.5.

<sup>38</sup> These two different kinds of voting power are described in different parts of the Grid West bylaws. The power to vote on “yes and no” kinds of questions is covered in Article V of the bylaws. The power to elect MRC members is covered in Article VI of the bylaws.

<sup>39</sup> Operational Bylaws, Section 8.4.1.

<sup>40</sup> Operational Bylaws, Section 5.15.2.

<sup>41</sup> Operational Bylaws, Section 8.2.

proposed decision, constitutes a major change in the scope of Grid West's activities or policies that must be authorized by at least seven out of the nine trustees, *i.e.*, a supermajority, in order to be implemented.<sup>42</sup> The members may impose this requirement on the Operational Board through an affirmative vote at a members' meeting of at least 18 of the class votes cast by the member classes and subclasses. The duration of this process would be approximately 70 days.

Finally, Grid West members are provided a right to dissolve the corporation if the Commission "orders a change to or issues an order or rule that preempts or otherwise renders inoperative a provision of the Articles of Incorporation or these Operational Bylaws" and the members do not approve the change or do not approve a decision by the Operational Board to accept the effect of the Commission's order.<sup>43</sup> The members must approve such changes by the same supermajority vote as is required for amending the Operational Bylaws, *i.e.*, a margin of at least two-thirds of the class vote in at least four out of the five member classes. If the members fail to approve the change, they may require the Operational Board to dissolve the corporation by the same supermajority of class votes.

**2. Members Representative Committee.** The MRC is a committee of either 30 or 31<sup>44</sup> representatives of the member classes. Generally, each member class may elect six representatives to the MRC. If a member class is comprised of subclasses, each subclass elects a specified portion of the class MRC representatives.

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<sup>42</sup> Operational Bylaws, Section 7.17. Certain types of Operational Board decisions are excluded from this member authority, including proposed budgets and bylaw amendments. Operational Bylaws, Section 7.17.5.

<sup>43</sup> Operational Bylaws, Section 12.4.3

<sup>44</sup> The State and Provincial Energy Authority Sub-class of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups class may elect five instead of four MRC representatives if the Sub-class has five or more members, thus resulting in a total of seven class representatives for this Class.

The MRC is responsible for nominating, electing and removing Operational Board trustees. The RTO West bylaws required a minimum of 24 MRC votes to elect or remove a trustee. To facilitate elections and allow more qualified candidates to be elected,<sup>45</sup> the Grid West bylaws now require at least 20 MRC votes for election (except where a third run-off vote is required to fill a vacancy, in which case only 16 votes are required).<sup>46</sup> To provide greater accountability, the MRC may now remove a trustee at any time, with or without cause, by the affirmative vote of 20 members at a duly held meeting of the MRC.

In addition, the MRC is responsible for reviewing, consulting with the Operational Board about, and voting on “Special Issues” which are listed and defined in the bylaws.<sup>47</sup> These are authorities of the Operational Board that have been identified as being so significant to the region that the Operational Board can only implement them through a special consultation and interaction process with the MRC, unless the proposed action is within the scope of a previous authorization. The “Special Issues List” is comprised of:

- Authorization for Grid West to exercise backstop measures (authority to arrange for transmission construction) with respect to chronic, significant, commercial congestion;<sup>48</sup>
- Departure from using the “Company Rate approach”;<sup>49</sup>
- Authorization to issue financial transmission rights;

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<sup>45</sup> See footnote 20, NAPA report *supra* note 21 at page 36.

<sup>46</sup> Operational Bylaws, Sections 7.2.4(ii) and (iii)(c).

<sup>47</sup> Operational Bylaws, Section 7.16.

<sup>48</sup> Grid West would be authorized, without using this process, to exercise backstop measures with respect to reliability needs.

<sup>49</sup> The Operational Board may not seek this authorization until at least eight years from the date Grid West begins to offer transmission services. Operational Bylaws, Section 7.16.8(ii).

- Authorization for Grid West's market monitor to impose penalties or actively intervene in markets; and
- Authorization to change a transmission owner's loss methodology.

Prior to taking a final action on a proposal to implement an authority within the ambit of a Special Issue, the Operational Board is required to consult with the MRC (as well as with the Governmental Committee<sup>50</sup>). The MRC is then required to vote on whether it supports or opposes the Operational Board's proposed use of the authority. If the proposal is supported by the affirmative vote of at least 16 MRC representatives, the proposal may be immediately approved and implemented by the Board upon the affirmative vote of a majority of the trustees. If the proposal fails to obtain at least 16 affirmative votes of the MRC, it is remanded to the Operational Board for further consideration. If, after remand by the MRC, the Operational Board still wishes to implement the Special Issue authority, it must first obtain the affirmative vote of a *supermajority* of the trustees, *i.e.*, at least seven of the nine trustees.<sup>51</sup> The duration of this consultation process, including a remand by the MRC, would be approximately 145 days.

**3. Board of Trustees.** The Grid West Operational Board will be comprised of nine independent trustees who, according to the bylaws, should collectively possess a knowledge of the operational characteristics of the Pacific Northwest power system; have executive management experience or board experience with electric utilities; and have personal abilities and qualities such as integrity, leadership, problem-

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<sup>50</sup> See *supra* at page 27

<sup>51</sup> Operational Bylaws, Section 7.16.7.

solving, facilitation, and consensus-building.<sup>52</sup> They will serve staggered three-year terms. A slate of qualified candidates will be developed by an independent search firm and presented to the MRC for nomination as candidates. Current trustees whose terms are expiring will automatically be included among the candidates to be considered by the MRC for nomination unless they have given notice that they do not wish to be considered. The requirement in the RTO West bylaws that two-thirds of the candidates must have senior management experience in at least one publicly or privately held for-profit or not-for-profit corporation or government entity of a particular size has been eliminated.<sup>53</sup>

Individuals are not qualified to serve as a trustee if they (or their spouse, domestic partner or any legal dependent):

- (i) Ha[ve] a direct or indirect financial interest in (including the ownership of securities of) a Market Participant<sup>54</sup> or Member (or any Affiliate of any of such Persons);<sup>55</sup> . .

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<sup>52</sup> The search for trustees will further seek individuals with relevant experience in commodities markets (including commodities trading risk management), electric bulk power transmission in the Western Interconnection, utilities law, finance, economics, accounting, information technology, engineering, regulation, and public policy, and will also seek to achieve racial, ethnic, age, and gender diversity.

<sup>53</sup> However, executive management experience or board experience with electric utilities has been retained as a desired candidate characteristic.

<sup>54</sup> The Grid West bylaws now define "market participant" rather than refer to the Commission's regulations for the definition. Market participant is defined as "any entity that, either directly or through an Affiliate, sells or brokers electric energy, is the owner or operator of transmission facilities, or provides transmission services within the Geographic Area."

<sup>55</sup> An exception exists for ownership through diversified mutual funds. Operational Bylaws, Section 7.10.1(i).

- (ii) [are] connected (or ha[ve] been connected within one (1) year prior to the date of the meeting to nominate individuals for Trustee) as an owner, director, officer, employee, partner, principal, or member of a governing board or council, or in any similar capacity, to a Market Participant or Member (or any Affiliate of any of such Persons);<sup>56</sup> or
- (iii) ha[ve] a Related Person<sup>57</sup> that is an officer, chief executive or general manager, director or trustee or member of a governing board or council, or that occupies a position of similar capacity of a Market Participant or Member (or any Affiliate of any such person).<sup>58</sup>

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<sup>56</sup> An exception exists for persons who served as an employee or an elected or appointed public official of a participating jurisdiction. Operational Bylaws, Section 7.10.1(ii).

<sup>57</sup> A "related person" is "an individual's spouse, domestic partner, parents (including stepparents and in-laws), children (including stepchildren and in-laws), and siblings (including stepsiblings and in-laws)." Operational Bylaws, Section 1.1.41.

<sup>58</sup> An exception exists for a related person who commits to retire or otherwise leave the position prior to the date of the first meeting of trustees after the nominee is elected. Operational Bylaws, Section 7.10.1(iii).

The Grid West bylaws eliminate the provision in the RTO West bylaws that allowed new trustees to retain financial interests in market participants for six months after election to the board. Additionally, trustees who leave the Operational Board (and their immediate families) are restricted, for periods up to one year, from acquiring financial interests in market participants or members, or entities that receive significant benefits from Grid West, a market participant or member.<sup>59</sup> Former trustees are also prohibited from accepting employment with or providing consulting services to a market participant or member for a period of one year. These provisions hold trustees to a higher standard than required by the RTO West bylaws previously approved by the Commission.

Operational Board meetings are required to be open to members and the general public except for sessions that may be closed for discussion of litigation or potential litigation, personnel matters, vendor or contractor selection, real estate transactions, commercially sensitive information, and other matters that are reasonably determined by the board in good faith to be entitled to confidential treatment.<sup>60</sup> Minutes of each board meeting must be made public (except for closed sessions).

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<sup>59</sup> Operational Bylaws, Section 7.11.

<sup>60</sup> Operational Bylaws, Section 7.6.

**4. Board Advisory Committee.** The Grid West bylaws retain the Board Advisory Committee structure previously approved by the Commission in the RTO West proceeding.<sup>61</sup> The Board Advisory Committee will not have a fixed size, and members will neither be elected nor divided into classes. It will serve a purely advisory function and its members will not vote on any matter. A new element allows each member, including state, tribal and provincial regulator members, to have up to three representatives on the Board Advisory Committee to represent its interests and those of any affiliates. For a stronger member voice, the Grid West bylaws require the Operational Board to establish and appoint member representatives to a Tariff Committee, an Operations Committee, and a Planning Committee.<sup>62</sup>

**5. Governmental Committee.** A Governmental Committee has been added to the Grid West bylaws.<sup>63</sup> The Governmental Committee is comprised of Grid West corporate representatives, interested members of the State and Provincial Energy Authority Sub-class and Tribes Sub-class, and representatives of electricity regulatory commissions of participating jurisdictions that are not members of Grid West. The committee's purpose is to consult with the Operational Board and to participate in activities determined to be appropriate by the Operational Board and representatives of participating jurisdictions. The Governmental Committee also has the same rights as the Board Advisory Committee to advise the Operational Board on those certain matters specifically identified in the bylaws.<sup>64</sup>

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<sup>61</sup> Operational Bylaws, Section 8.5.

<sup>62</sup> Operational Bylaws, Section 8.2.1.

<sup>63</sup> Operational Bylaws, Section 8.6. The Commission urged the RTO West filing utilities to incorporate a state representatives committee in the RTO West governance structure. *Avista et al.*, 100 FERC ¶ 61,274 at P 36.

<sup>64</sup> Operational Bylaws, Section 8.5.3

**B. Operation and Services.** This description of Grid West's operational characteristics and services is based on RRG work to date and is therefore still in a somewhat preliminary state. As currently envisioned, the Grid West proposal for initial operations includes voluntary consolidation of control areas by some transmission owners in the region and the provision of new regional transmission service over the larger Grid West footprint, which includes those transmission facilities in the consolidated control area as well as the facilities of transmission owners that choose to participate in Grid West but retain their own control area operations. Grid West will have three key roles: (i) control area operator for consolidating transmission owners; (ii) transmission provider with respect to the new regional service(s) for the larger Grid West footprint; and (iii) central scheduling entity for the Grid West managed transmission system.

**1. Control Area Operator.** At least three transmission owners – Bonneville, PacifiCorp and Idaho Power Company – anticipate that they may consolidate their control areas. By doing so, the vast majority of the area's transmission facilities would be placed into a common control area operated by Grid West. Other owners may decide to consolidate as well, but the assumption for Grid West development is that not all transmission owners will consolidate their control areas. As control area operator, Grid West would serve as the Balancing Authority and Reliability Authority for the consolidated control area. It is possible that Grid West may serve as the Reliability Authority for the entire Grid West managed transmission system. Grid West would be responsible for calculating Area Control Error and accepting voluntary generation offers made available to it to clear congestion and balance the system; operating Automatic Generation Control; maintaining reserve margins; monitoring system conditions;

directing Balancing Authority actions; and operating the Remedial Action Schemes. Grid West would operate a voluntary Day Ahead Reserve Market for supplying regulating, spinning and non-spinning reserves to the consolidated control area and a Real Time Balancing Market for balancing energy within the consolidated control area. The consolidating owners will be required to have sufficient Interconnected Operations Services to meet the requirements for their schedules. The consolidating owners and other entities either inside or outside the consolidated control area could offer resources into these markets, which could then be used to offset the obligations of the consolidating owners. The only party purchasing from these markets would be Grid West for the purpose of meeting the needs of the consolidated control area. Entities outside the consolidated control area would have to obtain their requirements from another source.

**2. Non-Control Area Services.** In addition, Grid West would serve as the exclusive provider of new regional transmission rights over the entire Grid West managed transmission system, *i.e.*, both inside and outside the consolidated control area, and would have necessary authority from participating transmission owners to enable it to provide such services. Grid West would: (i) retain a physical transmission rights approach but would implement a system-wide, flow-based method for determining available flow capacity; (ii) provide for centralized decision making for access requests, scheduling and determination of available flow capacity; and (iii) establish a centralized OASIS site. Grid West would also be the scheduling entity for the entire system. Users would be required to have physical transmission rights to schedule and must submit balanced schedules.<sup>65</sup> Grid West would implement a regional planning and expansion

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<sup>65</sup> The working proposal requires balanced schedules in order to avoid reliance on real-time energy markets.

program with back-up authority for reliability purposes. Additionally, it would establish an independent market monitor function. It would not, however, sell ancillary services or operate an ancillary services market outside of the consolidated control area; in that case the ancillary services would continue to be provided by the existing control area (Balancing Authority).

New service would include: (i) auctioned transmission service of one year or less comprised of a blend of available flow capacity, if any, and existing transmission rights or scheduling flexibility offered by customers into a Reconfiguration Market; (ii) long-term rights from existing capacity (if sufficient) or from capacity made available through expiration of contracts or added to the system through upgrades and construction; and (iii) a first come, first served post-Day Ahead service serving a function similar to nonfirm or secondary service. The proposal would preserve existing transmission arrangements without requiring transmission owners to purchase new service from the independent entity to serve such contracts.<sup>66</sup> Embedded costs would be recovered from pre-existing agreements as they are now by the original service providers. Embedded costs would be recovered from additional long-term transmission rights provided by Grid West through application of non-pancaked license plate rates to the extent practicable.

The pricing proposal being evaluated anticipates that each participating transmission owner would have a license plate rate (Company Rate) for new transmission service to load on that particular owner's system. An owner's Company Rate would be based upon its system revenue requirement (as included in the transmission owner's

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<sup>66</sup> Grid West is expected to schedule all service over the participating owners' combined systems, but unlike the RTO West proposal, transmission owners will not purchase a service from Grid West to serve pre-existing obligations. The owners will continue to serve as the transmission providers for service to their existing customers under existing contracts. This design is one attribute of Grid West that is distinctly different from the design of Commission-approved RTOs.

agreement with Grid West).<sup>67</sup> The proposal currently being developed would allow each owner to elect whether to have Grid West develop and propose its Company Rate or to develop and propose its own Company Rate.<sup>68</sup> Because each transmission owner currently expected to bring facilities to Grid West must obtain the Commission's approval of its transmission rates, the Commission would continue to maintain the same level of oversight of wholesale transmission rates as exists today, even if an owner elected to develop and propose its own Company Rate. Petitioners also envision Grid West applying a Grid Management Fee to schedules (including transmission owners' schedules for pre-existing service they provide) to recover Grid West's operating costs and a Revenue Recovery Rate Adjustment charge to new services if necessary to make up for participating transmission owners' revenue losses resulting from termination of their own short-term and nonfirm transmission sales. And the Grid West proposal envisions export transactions, whether under pre-existing rights or purchased rights, contributing to embedded cost recovery.<sup>69</sup>

Allocation of the costs of new transmission facilities in the Grid West footprint is yet to be resolved. The regional proposal of December 2003 stated, "the expectation is

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<sup>67</sup> An owner would also have an embedded cost rate for service over its system for pre-existing agreements. If a Company Rate, or the owner's embedded cost rate for pre-existing service, is already being paid for service to a load, another access charge would not be imposed for new service from Grid West to that load. If, for example, a transmission customer serving load and paying the embedded cost rate under a pre-existing agreement successfully bids in the Reconfiguration Market for short-term service from a different point of receipt *i.e.*, not provided in its contract, in order to purchase cheaper power for that load, it would only have to pay the auction price and other administrative charges described above. (Some Petitioners believe that the reconfiguration charges will not apply if a customer has a right to request alternate PORs without additional charges.) It would not have to pay another embedded cost rate to serve that load beyond the charges it pays to acquire the additional transmission rights through the Reconfiguration Market.

<sup>68</sup> While Grid West will establish a Grid Management Fee, Bonneville plans to continue to establish its own transmission revenue requirement and transmission rates, including the Company Rate, subject to FERC review under the applicable standards contained in Bonneville's statutes.

<sup>69</sup> Those wishing to obtain new rights to facilitate exports could purchase them either on a short-term basis through the Reconfiguration Market or on a long-term basis by requesting new long-term transmission rights through the general Grid West process for obtaining new long-term service.

that new projects will be funded by willing participants (outside of the potential for chronic congestion and reliability backstop actions of the Independent Entity).”<sup>70</sup> Where upgrades are not undertaken voluntarily, and assuming that Grid West adopts the same approach as had been proposed in the RTO West proceeding,<sup>71</sup> costs of construction arranged by Grid West pursuant to its reliability backstop authority would be allocated by Grid West to the owner (or owners) that had failed to maintain compliance with reliability or transmission adequacy standards. If Grid West arranges for construction to resolve chronic, significant, commercial congestion (which would require the Operational Board to first obtain authorization through the Special Issues process), those costs would be allocated to those loads that benefited from the upgrade or new facility.

Grid West would develop Transmission Adequacy Standards and coordinate the transmission planning and expansion process within the Grid West footprint, including development of an annual five-year transmission plan. It would have backstop authority, consistent with any requirements at law, to affect an expansion of a participating transmission owner's transmission facilities, and allocate the costs to the owner, where the owner had failed to comply with reliability criteria or had allowed its transmission capacity to decline over time.

## **V. PETITIONERS' UNDERSTANDING OF THE LEGAL FRAMEWORK WITHIN WHICH GRID WEST WOULD OPERATE**

Petitioners and the other transmission owners participating in the development of the Grid West proposal have not determined the form of the eventual filings they and Grid West must make and the relief sought before Grid West can sell transmission

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<sup>70</sup> Regional Proposal at 10,

[http://www.gridwest.org/Doc/FinalNarrative\\_RegionalProposal\\_Dec242003.pdf](http://www.gridwest.org/Doc/FinalNarrative_RegionalProposal_Dec242003.pdf).

<sup>71</sup> *Id.* at 23. “The Platform Group's sense is that most regional parties support the general approach to planning and expansion set forth in the RTO West Stage 2 filing.”

services. This cannot be completed until the Grid West design is established by the independent Developmental Board of Trustees. At a minimum, they anticipate filing and seeking approval of the Grid West tariff and transmission agreements with transmission owners. For purposes of this request for a declaratory order, Petitioners have certain assumptions regarding the legal framework within which Grid West would operate. These assumptions are set forth here as an aid to understanding the questions posed by Petitioners. Petitioners request the Commission to correct any mistaken assumptions they may have.

**First**, Petitioners assume for purposes of this Petition that Grid West will be a “public utility” within the meaning of the Federal Power Act once it provides regional transmission services under its own tariff.

**Second**, Petitioners assume that, because Commission policy makes RTO formation voluntary, they may request, and the Commission may grant, approval for a regional transmission provider that offers transmission services as a transmission provider according to the terms of an OATT pursuant to Order 888 (18 CFR 35.28 (2004)) and that does not meet all of the requirements of Order 2000 (18 CFR 35.34 (2004)).<sup>72</sup>

**Third**, Petitioners assume that a nonjurisdictional utility, or an entity over which the Commission has only limited authority, that allows its facilities to be used by Grid West for the provision of regional transmission service will not itself become subject to

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<sup>72</sup> Order 2000 recognized that barriers to RTO formation might prevent all public utilities from participation in FERC-recognized RTOs. 18 CFR §35.34(g) (2004). For purposes of this request for guidance, Petitioners ask the Commission to assume that no application for ISO or RTO status will accompany the initial Grid West filings. Petitioners note, however, that they do seek confirmation that the governance structure of Grid West satisfies the independence standard of Order 2000. See Section VI.2 below.

Commission jurisdiction, or any expansion of the scope of Commission jurisdiction, over its activities as a consequence of its participation in Grid West.

**Fourth**, Petitioners assume that a nonjurisdictional utility, or an entity over which the Commission has only limited authority that acquires transmission only services from Grid West, will not itself become subject to Commission jurisdiction.

**Fifth**, Petitioners also assume that mere membership in Grid West, a Washington nonprofit corporation, by nonjurisdictional entities will not result in any way in their becoming subject to the Commission's jurisdiction.<sup>73</sup>

**Sixth**, Petitioners assume that if Grid West is a public utility, it must file its tariff and related protocols with the Commission prior to commencing service. Based on current Commission policy, Grid West would need to file a *pro forma* OATT or a tariff that is determined by the Commission to be comparable or superior to the OATT. Petitioners also assume Grid West would thereafter be subject to Commission orders that apply generically to all public utilities with Commission-approved open access tariffs.

## **VI. QUESTIONS POSED AND DECLARATIONS SOUGHT FROM THE COMMISSION**

Petitioners have indicated that guidance on certain issues will be critical to their determination of whether to continue development of Grid West beyond Decision Point 2 and, assuming the development continues, to their ultimate decision on whether to become participating transmission owners by executing transmission agreements with Grid West. To assist Petitioners in evaluating the efficacy of continued Grid West development efforts, Petitioners pose the following questions and seek guidance on the

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<sup>73</sup> Under the Grid West bylaws membership is completely separate from signing a transmission agreement and in no way commits a utility to provide its facilities for Grid West's use.

effect of the Grid West arrangements described above. A discussion of Petitioners' views follows each question posed.

1. **Assuming Grid West seeks approval under Section 205 of the Federal Power Act to offer regional transmission service pursuant to an open access tariff, but not as an Order 2000 RTO, will the Commission treat Grid West's application as one that must satisfy the open access requirements of Order 888 (that is, offering services consistent with or superior to the *pro forma* OATT requirements) rather than the requirements for RTO status?**

**Petitioners' Views.** Petitioners request the Commission to commit to reviewing a Grid West filing on its own merits under Order 888 rather than under the requirements of Order 2000. Grid West will sell transmission service under an OATT, but the Grid West proposal is not intended to create an Order 2000 RTO.<sup>74</sup> While Petitioners believe the Grid West working proposal would provide nondiscrimination benefits, economic efficiencies and reliability improvements superior to those provided under Order 888, they also acknowledge that the proposal would not meet all the requirements of Order 2000. Petitioners believe that the working proposal represents the most change that could be accepted by a significant portion of the region at this time while providing a platform for potential future evolution brought about by the region's needs and aspirations.

The Commission recently issued a declaratory order providing guidance on another proposal that represented the boundary of what another region's constituents

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<sup>74</sup> "Every public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission a tariff of general applicability for transmission services, including ancillary services, over such facilities. Such tariff must be the open access *pro forma* tariff contained in Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs) or such other open access tariff as may be approved by the Commission consistent with Order No. 888, FERC Stats. & Regs. ¶31,036." 18 CFR §35.28(c) (2004).

would accept with respect to Order 2000. In *Entergy Services, Inc.*,<sup>75</sup> the Commission conditionally approved an Entergy proposal that would combine the benefits of Order 888 with the independent decision-making benefits of Order 2000. Notably, as Entergy explained in its filing letter, its proposal was developed against the background of the company's long-term inability to form or join an Order 2000 RTO. The company explained that its proposal to have an independent coordinator of transmission perform many of the Orders 888 and 2003 functions for the company represented "a new and innovative attempt to further the Commission's goals by establishing significantly greater independence in the provision of transmission services *now*, rather than waiting until an RTO is formed in the Southeast."<sup>76</sup> The Commission conditionally approved the proposal, finding that it was "a step beyond" the *pro forma* OATT and Order 888 principles and that it offered a more independent transmission decision-making process. In its guidance order, the Commission noted that the independent coordinator of transmission "must be, both in perception and in reality, entirely independent from Entergy."<sup>77</sup> Assuming that Entergy demonstrates that the independence requirement is met in its upcoming filing, the Commission found that the proposal was a positive development towards an independent regional transmission planning and pricing regime.<sup>78</sup>

Similarly, Grid West proposes to be unambiguously "superior to" the OATT.

The working proposal for Grid West represents an innovative attempt to provide not only

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<sup>75</sup> *Entergy Services, Inc.*, 110 FERC ¶ 61,295 (2005).

<sup>76</sup> Petition for Declaratory Order, Docket No. EL05-52-000 at 3 (Jan. 3, 2005).

<sup>77</sup> 110 FERC ¶ 61,295 at P 35 (2005).

<sup>78</sup> *Id.* at P 65. As Commissioner Brownell stated in her concurring opinion, "While divesting assets or converting operational control to a third-party is optimal in eliminating transmission market power, this Commission is willing to test third-party transmission coordination."

independent transmission decision-making but also the benefits of centralized operation and planning while respecting the concerns of regional constituencies concerning Order 2000 and SMD. The Grid West proposal is much more than a third-party transmission coordinator for a single company system. The proposal represents a significant step beyond the Order 888 world in which transmission providers operate their separate systems under separate tariffs and separate rates. Grid West would become the transmission provider that: (i) determines system-wide available flow capacity; (ii) operates a single OASIS for all participating systems; (iii) provides services that can reconfigure available flow capacity and released transmission rights into flow-based injection/withdrawal rights to enable trading of non-identical transmission rights over all participating systems; (iv) makes access determinations for all participating systems; and (v) coordinates transmission planning on a single-system basis. Grid West's Operational Bylaws provide for decision-making that is both in perception and in reality, entirely independent from the transmission owners and market participants, while adding innovative accountability and cost control mechanisms to better serve the interests of the stakeholders.

Petitioners encourage the Commission to provide a basis for the region to further develop the proposal and negotiate the transmission agreements without the fear that Order 2000 requirements will be applied to the Section 205 filing. As described above, stakeholders will assess the results of initial development this summer, and the transmission owners plan to decide at the end of September whether to continue funding the effort and seat an independent Developmental Board. Before they make a decision to spend significant additional funds on the development effort, Petitioners need to know

the criteria the Commission will use to judge the proposal. Without that guidance, Petitioners fear that waiting for a Commission decision at the end of the process will render worthless the significant funds and effort they have invested in developing the proposal by insisting that the Grid West proposal be filed under Order 2000, where it would likely either be rejected or accepted conditioned upon compliance with Order 2000 over a specified timeframe. Since Bonneville's participation is contingent on regional accountability being a controlling principle regarding the direction and pace of Grid West's evolution, it is important to know now whether, under current law, the Commission will assess (and hopefully approve) an initial proposal under Order 888 rather than condition implementation on satisfaction of Order 2000 characteristics and functions.

**2. Does Grid West's governance structure as embodied in its Operational Bylaws allow it to satisfy the independence requirements of Order 2000?**

**Petitioners' Views.** Petitioners request the Commission to declare that the Grid West governance structure satisfies the Commission's requirements for independence under Order 2000. Grid West's governance structure was developed recognizing that the organization must be responsive to regional stakeholders, but at the same time produce decisions that reflect the best interests of the region as a whole, as opposed to the narrow interests of particular stakeholders. To accomplish this, the organization's board of trustees must be truly independent. Independence meant two equally important things during the Grid West bylaws development process: first, that no trustee has a financial interest in any market participant that does business within Grid West's proposed geographic area, and second, that no trustee is intended to represent the interests of a particular stakeholder or class of stakeholders. Recognizing that Grid West during its operational stage will become a

public utility, the Grid West development process looked to Order 2000 for technical independence requirements, and imposed as a condition precedent to Grid West's offering transmission services the need for the Commission to "holding (without conditions or required changes) that the governance structure set forth in these Operational Bylaws allows the Corporation to satisfy the independence requirements of FERC Order No. 2000 and its amendments."<sup>79</sup>

The Operational Bylaws provide for broad regional input and require additional process regarding major decisions, but they require that decision-making must lie in the hands of decision makers that lack, in perception and in reality, the narrow interests of particular stakeholders or classes of stakeholders. Specifically, within the Grid West governance structure the members and the MRC do not wield actual authority in policy or operational decisions beyond that which is already provided in the bylaws. The members and MRC are not independent. They provide the board of trustees with guidance and advice, but do not make policy or operational decisions for Grid West. A decision-making process where the independent board carefully listens to each position, deliberates in public, and then makes a decision will help to ensure sound regional outcomes.

The Commission established four requirements for independence from market participants.<sup>80</sup> Those four requirements and a description of how they are addressed by the Grid West governance structure follow:

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<sup>79</sup> Operational Bylaws, Section 7.1.1(v)(c).

<sup>80</sup> 18 CFR § 35.34(j)(1) (2004).

**a. Grid West, its employees and non-stakeholder directors do not have financial interests in any market participant.**

Grid West not only meets, but exceeds the Commission's requirement that neither Grid West, nor any of its employees or non-stakeholder directors, have financial interests in any market participant. Grid West is a nonprofit corporation that will own no financial interests in any other company. The Grid West bylaws further prohibit the corporation from owning any transmission or distribution facilities, any interest in generation facilities or generation output (except that which is appropriate to meet its congestion management and control area operator responsibilities) or any interest in a power or energy exchange in which participation by buyers and sellers is mandatory (except for mandatory rules for entities that voluntarily agree to Grid West's operation of their control areas).<sup>81</sup>

Grid West's non-stakeholder trustees, officers and employees will not have financial interests in any market participant or member. The Grid West Operational Board will be comprised of independent, non-stakeholder trustees who may not have current financial ties to a market participant or member and may not have worked for or been associated with a market participant or member in the year preceding their nomination as a trustee. The same prohibitions apply to anyone in a trustee's immediate family.

Officers, employees, substantially full-time consultants and contractors will be bound by employee conduct rules that prohibit them from having a direct or indirect financial interest in market participants, other than securities through diversified mutual

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<sup>81</sup> Operational Bylaws, Section 3.2.

funds. The employee conduct rules will also prohibit them from: (i) being an owner, director, officer, employee, attorney, partner or principal, or substantially full-time consultant or contractor of a market participant; (ii) using (or appearing to use) their positions for private gain or benefit to themselves or to others, including Related Persons; and (iii) having a direct or indirect interest in or relationship with any outside person or organization that might affect (or be perceived to affect) the objectivity or independence of their judgment or conduct in carrying out their duties.<sup>82</sup>

In the RTO West proceeding, the Commission determined that similar limitations and prohibitions met the requirement that trustees, officers and employees of an RTO have no financial interests in market participants.<sup>83</sup> The Commission should make the same finding here.

**b. Grid West has a decision-making process that is independent of control by any market participant or class of participants.**

The Grid West bylaws provide for an independent non-stakeholder board, balanced member representation, and a Board Advisory Committee open to all members. Candidates for trustee positions are identified by a neutral and independent search firm. Member representation and voting on the MRC is essentially the same as that which was approved by the Commission in the RTO West proceeding. Trustees are nominated and elected by the MRC through a voting process that does not allow any one type of member to control the election of a particular candidate. Election or removal of a trustee cannot

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<sup>82</sup> See Attachment B (Employees Conduct Rules—Exhibit A to Developmental Bylaws). These developmental stage rules are incorporated into the Operational Bylaws when the latter become effective. Operational Bylaws, Section 9.13. The Interim Board of Directors has recently supplemented the employee conduct rules to incorporate all of the restrictions described above. *See* Interim Board Resolution, Attachment C.

<sup>83</sup> *Avista Corp. et al*, 96 FERC ¶ 61,058 at 61,175(2001).

be imposed or vetoed by a single market participant or a single class of market participants because, while each member class has only six votes (or, in one case, seven),<sup>84</sup> trustees must be elected and removed by at least 20 (of 30 or 31) MRC votes.<sup>85</sup> Therefore, no single class or any combination of two or three classes may force the election or removal of trustees, and no single class may block election or removal of a trustee.<sup>86</sup> The Commission should find, as it did in the RTO West proceeding, that this process ensures fair and non-discriminatory trustee selection.<sup>87</sup>

While many Grid West stakeholders desire to maintain the benefits they expect to flow from seating an independent board, others insisted upon an absolute right of members to block controversial Operational Board proposals in order to incorporate into the Grid West model a mechanism to better protect board accountability to Grid West members. In the end, the bylaws reflect a compromise that Petitioners believe satisfies the Commission's independence requirement, while also serving the competing desire for board accountability. This compromise is the "supermajority" vote concept, described above,<sup>88</sup> which vests the MRC and members with authority<sup>89</sup> to require the Board to

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<sup>84</sup> *Infra*, footnote 46.

<sup>85</sup> The Commission has approved various RTO trustee election mechanisms ranging from a majority vote requirement (*Arizona Public Service Company, et al.*, 101 FERC ¶ 61,033 at P 53-54 (2002)) to RTO West's 24 vote minimum requirement. The 20 vote minimum requirement in the Grid West bylaws meets all of the Commission's independent voting requirements and lies half way between a majority requirement and the 24 vote requirement of RTO West.

<sup>86</sup> At least 11 MRC members, or 12 if the MRC has 31 total members, must choose not to vote for a candidate's election or for a trustee's removal in order to block the candidate's election or the trustee's removal.

<sup>87</sup> In finding that the RTO West proposal met the Order 2000 independence standard, the Commission stated that "[n]o single class of owners can exercise control over the selection of the directors so as to threaten independence, and the Trustees Selection Committee [now the MRC in Grid West], which chooses among Trustee candidates, reflects the diversity among stakeholder groups." *Avista Corp. et al.*, 95 FERC ¶ 61,114 at 61,328 (2001). Petitioners assert that the same reasoning and analysis applies to Grid West, as it did to its predecessor, RTO West.

<sup>88</sup> See *infra* at 20-21.

reach a supermajority consensus prior to moving forward with a controversial proposal. This *does not*, however, prohibit the Board from moving forward – or refusing to move forward – with any proposal, or limit its discretion in doing so independently. Rather, it requires a slowing of the decision-making process and a higher degree of consensus by the independent trustees than would otherwise be required to approve an Operational Board proposal. Petitioners believe that this compromise, whereby independent Operational Board decision-making is preserved but members or their representatives may insist upon higher board consensus for approval of controversial proposals, achieves an effective balance that reflects both the need for independence and the demand for accountability. Even if the Commission determines that these authorities of the MRC and the members limit the independence of the board, the Commission should still find that the mechanisms sufficiently comply with the independence requirement because both authorities are wielded by a balanced representation of the members.<sup>90</sup> No one class is able to dominate the outcome of the MRC or the members' vote. In fact, in the MRC vote, more than two classes voting unanimously are required and, in the members' vote, at least three classes voting unanimously are required.

The MRC's ability to remove trustees without cause is a critical element of the RRG's decision to hold the Operational Board accountable to the stakeholders for its policy decisions. However, a safeguard against too easy use of this authority has been built in. Successful removal of a trustee requires an affirmative vote of a *supermajority*

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<sup>89</sup> Because the ability of the MRC and the members to force a supermajority Operational Board vote on particular issues requires at least 15 (or 16 if there are 31) MRC votes and 18 member class votes, respectively, no single class of market participants can control the outcome of the votes.

<sup>90</sup> “Where there are stakeholder committees that advise or share authority with a non-stakeholder board, it is important that there be balanced representation on the stakeholder committees so no one class dominates its recommendations or its decisions.” 65 Fed. Reg. 810, 857 (Jan. 2000).

of the MRC, thereby requiring agreement among multiple member classes that a trustee's action has been sufficiently egregious to warrant removal. No one market participant or class of participants controls this process. Not even a majority vote can effect a removal. This mechanism is not otherwise contrary to any of the Commission's stated requirements for independence. The Commission approved a similar mechanism in the RTO West proceeding, though that mechanism required 24 votes to remove a trustee without cause.<sup>91</sup>

The Board Advisory Committee is the same members committee with the same purpose and rights as that approved in the RTO West proceeding, except that the affiliates of members may now be granted membership. In the RTO West proceeding, the Commission found that the

Board Advisory Committee affords stakeholders an opportunity to bring to the attention of the Board of Trustees any issue of importance to stakeholders. Notably, participation in the Board Advisory Committee is not limited, and any RTO West member may join. Furthermore, the proposal allows for dissenting views to be presented to the Board of Trustees. We believe these provisions afford ample opportunity for stakeholders to participate, within an independent governance structure.<sup>92</sup>

The Commission should find that the Grid West decision-making process embodied in the Operational Bylaws is independent of control by any market participant or class of participants.

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<sup>91</sup> *Avista Corp. et al.*, 95 FERC ¶ 61,114 at 61,326 (2001).

<sup>92</sup> *Id.* at 61,329.

- c. **Grid West is not required to have exclusive and independent authority under Federal Power Act Section 205 to propose rates, terms and conditions of transmission service provided over the facilities it operates.**

In *Atlantic City Elec. Co. v. FERC*,<sup>93</sup> the D.C. Circuit held that, while public utility transmission owners may cede rate-making authority to an RTO by contract, the Commission lacked the authority to require public utility transmission providers participating in an RTO to surrender their statutory rights under Section 205 of the Federal Power Act to make filings to initiate rate changes. Therefore, Petitioners respectfully assume that the Commission will no longer apply the original requirement of Order 2000 that an RTO have exclusive and independent authority for all RTO rate filings. Rather, Petitioners assume the Commission will allow, as it has with PJM,<sup>94</sup> RTO-NE,<sup>95</sup> MISO,<sup>96</sup> and SPP,<sup>97</sup> public utility transmission owners and Grid West to negotiate an allocation of their filing rights under Section 205 of the Federal Power Act. Petitioners also assume the Commission will allow Bonneville and Grid West to negotiate their respective responsibilities for rates, terms and conditions for service over the federal transmission system for approval by the Commission, consistent with Bonneville's statutory authorities. As the Commission has previously stated, these allocations will be tested against the Commission's requirement that "the interests of the

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<sup>93</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir 2002), *mandate enforced by*, 329 F.3d 856 (D.C. Cir. 2003).

<sup>94</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 at P 30-32 (2003).

<sup>95</sup> *ISO-New England, Inc.*, 106 FERC ¶ 61,280 at P 71-74 (2004).

<sup>96</sup> *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,380 at P 18-19 (2005).

<sup>97</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 93-98 (2004).

region as a whole are properly safeguarded.”<sup>98</sup> This determination cannot be made, of course, unless and until such negotiated allocations are presented to the Commission for approval under Section 205. However, the Commission should find that Grid West meets the independence requirements of Order 2000 assuming that the Commission agrees upon subsequent review that the allocation of filing rights between the transmission owners and Grid West is in the best interest of the region as a whole.

**d. Grid West does not have to provide a compliance audit of the independence of the organization's decision-making process to be performed two years after its approval.**

The Grid West governing structure, though providing for multiple accountability mechanisms, does not provide for representation of market participants on the Board of Trustees nor does it provide for any other mechanism through which market participants may prohibit a board vote or limit the discretion of the board. Consequently, this requirement is not applicable. To the extent the Commission finds this requirement to be applicable because of the rights of the MRC and the members to require a supermajority vote of the Operational Board in some circumstances, it should find that the membership voting structure and the membership representation on the MRC reflect a “balanced proportion of stakeholder representatives with no one sector having disproportionate control” of their decisions.<sup>99</sup> Consequently, the independence of the Grid West decision-making process is sufficiently protected.

For the reasons set forth above, the Commission should declare that the proposed governance structure established by the Grid West Operational Bylaws complies with the independence requirements of 18 CFR § 35.34(j)(1), subject to a later determination that

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<sup>98</sup> *ISO-New England, Inc.*, 106 FERC ¶ 61,280 at P 72 (2004).

<sup>99</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 38-43 (2004).

the allocation of Section 205 filing rights and ratemaking responsibilities safeguards the interests of the region as a whole.

**3. What is the Commission's position regarding transmission owners' withdrawal rights?**

**Petitioners' Views.** To facilitate transmission owners' continued development of Grid West, Petitioners would significantly benefit from clarification by the Commission with regard to the withdrawal rights of transmission owners. Petitioners seek guidance on this issue because certain Commission pronouncements in the ISO/RTO context have created uncertainty about the Commission's position on this matter. Although the Commission has acknowledged that transmission owners can withdraw from voluntary regional transmission organizations, it has indicated that regulatory approval is necessary under Section 205 of the FPA.<sup>100</sup> In its 2003 "Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements under the Federal Power Act,"<sup>101</sup> the Commission clarified that public utilities withdrawing from an RTO would not be required to make a filing under Section 203 of the Federal Power Act, where the withdrawal did not involve a transfer of an ownership or proprietary interest in facilities. Instead, the Commission provided that arrangements to exit an RTO would be reviewed in the context of filings made under Section 205. Likewise, since Grid West will not be an RTO, contractual rights to exit should be reviewed in the context of a contract filings made under Section 205.

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<sup>100</sup> *NE-ISO New England et al*, 109 FERC ¶ 61,147 at P 39 (2004).

<sup>101</sup> 104 FERC ¶ 61, 248 (2003).

**a. Will the Commission approve a contract between Grid West and Bonneville that allows Bonneville to withdraw as a participating transmission owner without Commission approval?**

Plainly, Bonneville is not a public utility subject to the Commission's Section 205 rate authority.<sup>102</sup> Thus, Bonneville has no Section 205 filing obligation. Even assuming that Grid West would have to file Bonneville's notice of termination of its transmission agreement with Grid West, this filing would not create Commission jurisdiction over Bonneville's decision to withdraw.

Bonneville's statutory scheme authorizes and directs the Administrator to discharge the functions of that office in accordance with the policy established by the Bonneville Project Act and in "a sound and business like manner."<sup>103</sup> The Bonneville Project Act directs and authorizes "the administrator . . . to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, *as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy . . .*" (emphasis added).<sup>104</sup> Bonneville believes that these and other authorities permit the Administrator to contract with Grid West to provide transmission services over its transmission facilities,<sup>105</sup> but the Administrator must also remain free under this statutory scheme to make a future determination that it is no longer "necessary, desirable, or appropriate" to continue to allow Grid West the use of

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<sup>102</sup> Federal Power Act Section 201(f), 16 USC § 824(f). The same is true for any other public utility district or municipal transmission owners who elect to execute participation agreements with Grid West.

<sup>103</sup> 16 USC § 839f(b).

<sup>104</sup> 16 USC § 832a(b). *See also* 16 USC § 838b.

<sup>105</sup> Bonneville acknowledges that concerns raised about delegation (or sub-delegation) of its authorities should and will be addressed in the transmission agreement negotiations with Grid West and in Bonneville's record of decision prior to execution of any such agreement with Grid West.

the federal system. Bonneville will not participate in Grid West if Bonneville does not have the ability to withdraw from Grid West without the Commission's permission as Bonneville believes that such a restriction would infringe on the Administrator's discretion to carry out his duties under Bonneville's statutes and would not comport with Bonneville's statutory requirement to operate in a sound and business-like manner. Consequently, Bonneville does not have the authority to grant the Commission the power to determine whether Bonneville may terminate its contract with Grid West.

The Commission has acknowledged the limited nature of its jurisdiction over federal power marketing agencies in a recent case involving the Western Area Power Administration ("Western") and the California Independent System Operator ("CAISO"). There, the Commission stated that Commission approval is not needed for a decision by a federal power marketing agency to withdraw from the control area of a public utility.<sup>106</sup>

Petitioners anticipate that Grid West will desire contractual provisions governing a withdrawal by Bonneville, including a requirement to support any pre-withdrawal contracts executed by Grid West that use the federal system. For purposes of this request, Petitioners ask the Commission to assume that Bonneville's transmission agreement with Grid West contains negotiated termination provisions agreeable to Bonneville and Grid West allowing Bonneville to withdraw from Grid West.

For all of the above reasons, Petitioners believe that the Commission lacks authority to prevent Bonneville from withdrawing from Grid West. As such, Petitioners request the Commission's acknowledgement that Commission approval is not needed for Bonneville to withdraw from Grid West.

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<sup>106</sup> *California Independent System Operator Corporation*, 109 FERC ¶ 61, 225 at P 120(2004).  
PAGE 49 - PETITION OF BONNEVILLE POWER ADMINISTRATION, PACIFICORP, AND  
IDAHO POWER COMPANY FOR DECLARATORY ORDER RELATING TO THE  
DEVELOPMENT OF GRID WEST, A PROPOSED TRANSMISSION PROVIDER

- b. Will the Commission clarify that a participating transmission owner that is a public utility would be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable?**

Petitioners contemplate Grid West serving as an independent transmission provider with a FERC-approved open access tariff that allows it to offer regional transmission services. It will own no transmission facilities; thus, its ability to provide transmission services is dependent on its ability to contract with transmission owners for use of their facilities. In determining whether to proceed with Grid West, each public utility funding Grid West's development and its state regulators will consider whether voluntarily allowing Grid West to use its transmission facilities to offer regional service is in the ratepayers' and shareholders' interest. Each public utility has statutory and fiduciary obligations to consider in reaching its decision. If a public utility or its state regulator determines that any decision to participate in Grid West is an irrevocable decision, the standard for a positive decision to participate is likely to be extremely high, and perhaps unattainable. But participation is more likely if a public utility and its state regulators know that withdrawal (and a return to OATT service as then defined by the Commission) is an option that can be exercised.<sup>107</sup> Petitioners, therefore, seek clarification that, assuming the transmission owner's exit rights proposed by Grid West are found to be just, reasonable and not unduly discriminatory at the outset before Grid

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<sup>107</sup> Petitioners recognize that any intervening change to the Commission's policy or authority to compel public utilities to participate in a regional transmission entity, ISO or RTO could change this result and authorize the Commission to determine whether continued participation in a regional transmission entity, ISO or RTO is required. However, to the extent that a public utility can comply with the Federal Power Act by maintaining an Order 888 *pro forma* tariff, then a utility should be entitled to return to that option if it determines it should terminate its voluntary participation in a regional transmission entity. The Order 888-compliant service offered by the withdrawing public utility is by definition just, reasonable and not unduly discriminatory. The effects of withdrawal on the regional transmission entity are discussed below.

PAGE 50 - PETITION OF BONNEVILLE POWER ADMINISTRATION, PACIFICORP, AND IDAHO POWER COMPANY FOR DECLARATORY ORDER RELATING TO THE DEVELOPMENT OF GRID WEST, A PROPOSED TRANSMISSION PROVIDER

West becomes operational,<sup>108</sup> the Commission's review of any specific proposed withdrawal will focus on consistency with the approved exit rights and whether the time and manner of withdrawal are consistent with the contract and applicable law.<sup>109</sup> Such assurance will aid Petitioners in their Grid West development efforts in that public utilities and their state regulators will be assured that participation in Grid West will remain voluntary.

As noted above, Petitioners anticipate that Grid West will desire contractual provisions governing any withdrawal including commitments by transmission owners to support any pre-withdrawal contracts executed by Grid West that use an transmission owner's system to provide services to third parties. Assuming Grid West development continues, the independent trustees appointed to the Grid West Developmental Board and the transmission owners will negotiate provisions relating to withdrawal rights. These negotiations are expected to commence shortly after the Board is seated, which is scheduled for fall 2005. The Petitioners contemplate filings of these agreements and the Grid West tariff under Section 205 prior to Grid West's commencement of operations. For purposes of this request, Petitioners ask the Commission to assume that transmission agreements between Grid West and the transmission owners have been successfully

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<sup>108</sup> Such a determination could be accomplished either through a pre-operational Section 205 filing or alternately, a petition for declaratory order.

<sup>109</sup> Petitioners are also aware that the Commission has required PJM, a Commission-approved RTO, to modify its transmission owners' agreement to provide for Section 205 filings before any proposed withdrawals may become effective. *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003). The rationale in that case was that prior Commission approval to withdraw is necessary "in order to determine whether all of the elements contained in the filed arrangements meet the principles of Order No. 2000 and are just and reasonable pursuant to Section 205 of the FPA." *Id.* at P 36. Petitioners, however, assume for purposes of this request for guidance that they will not seek RTO status initially and ask the Commission to assume for purposes of this declaratory order that they have not done so. Thus, the inquiry as to whether all elements in a withdrawal proposal meet the principles of Order 2000 would not be applicable to the Grid West conceptual proposal.

negotiated and the Commission has reviewed and approved the contractual arrangements and concluded that the provisions, including withdrawal provisions for the public utilities transmission owners, are just, reasonable and not unduly discriminatory. Such a determination necessarily requires that the withdrawal provisions permit Grid West to fulfill any contractual obligations it has undertaken that require use of the withdrawing transmission owner's transmission system on terms that are just and reasonable and not unduly discriminatory. The parties will also negotiate the grounds for withdrawal, notice and timing of withdrawal, and any other provisions related to mitigating the effects of withdrawal on customers.<sup>110</sup>

Public utility Petitioners do not seek to evade any Section 205 filings that may be required at the time of any withdrawal in connection with revisions to tariff protocols or agreements not previously approved or accepted for filing without suspension by the Commission. For example, if implementation of a transmission owner's withdrawal requires revision of existing operating agreements or tariff protocols, Petitioners anticipate such revised or new agreements or tariff protocols would be filed under Section 205 by Grid West or the public utility transmission owner(s) involved. However, they seek clarification that the owners' contractual right to withdraw under certain terms and conditions previously approved by the Commission need not be the subject of a Section 205 proceeding at the time of any such withdrawal.<sup>111</sup> The Commission could, of course, require a compliance filing by a public utility to insure that any proposed

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<sup>110</sup> Examples of withdrawal provisions contemplated by the parties in the RTO West development process can be found in the RTO West Stage 2 filing. See "Stage 2 Filing and Request for Declaratory Order," Attachment A (RTO West Operating Agreement), Section 2.3, Docket No. RT01-35-000.

<sup>111</sup> Of course, any withdrawing public utility would be required by law to offer open access transmission services meeting the Commission's then-applicable standards. Therefore, the Commission also retains the authority to insure that a withdrawing public utility complies with the Federal Power Act standards for service.

withdrawal is consistent with approved exit rights. In addition, if the Commission were to determine that the unanticipated effect of a withdrawal is to render the rates, terms or conditions of Grid West's transmission service unjust, unreasonable or unduly discriminatory, the Commission retains authority under Section 206 to investigate and remedy any such problem. Furthermore, upon a public utility's withdrawal from Grid West, Grid West may be required to make a filing under Section 205 to reflect any tariff changes necessitated by the withdrawal. This assures the Commission that it can address the impacts of a withdrawal on rates, terms and conditions of Grid West's service.

**4. If Grid West becomes a public utility that sells transmission service but not as an RTO, will the Commission provide assurances that it will not thereafter require Grid West to comply with Order 2000 requirements or Standard Market Design approaches?**

**Petitioners' Views.** The most significant obstacle to broader regional support for the Grid West proposal is the fear of many stakeholders that either the Grid West Operational Board or the Commission will in the future impose inappropriate, costly, damaging or inequitable changes on the region regardless of regional views.<sup>112</sup> The RRG has addressed the first fear by incorporating effective accountability mechanisms into the Grid West bylaws that, although not prohibiting the Operational Board from taking specified actions, require it to slow its decision-making process, consult with members' representatives about the proposal, and obtain an affirmative vote of a supermajority of the trustees to implement a specified proposal if it fails to garner majority support from the members or their representatives. Members may also remove trustees from office. There are, however, no similar limitations that the RRG can place on the Commission,

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<sup>112</sup> The Petitioners are concerned about the Commission taking action to force a unique evolution of Grid West simply because Grid West is a public utility subject to the Commission's jurisdiction.

although the Operational Bylaws authorize members to dissolve the corporation if the Commission preempts or renders inoperative a provision of the bylaws, including the requirement that specified changes obtain approval of a majority of the MRC or, alternately, a supermajority of the Operational Board before becoming effective.<sup>113</sup>

Petitioners are aware of limitations that restrict the ability of members of a regulatory body to make commitments for future members. Nevertheless, it is unlikely that the Grid West proposal could move forward at Decision Point 2 if the Commission is unable to ease the stakeholders' fears that this Commission or a future Commission may order Grid West to implement significant changes seen as adverse to stakeholder interests. The Commission should declare that it has no authority to require a public utility whose tariff has been approved under one rule (Order 888) to subsequently comply with the requirements of another rule (Order 2000) that applies only to organizations that have voluntarily applied for RTO status. The Commission should also restate its assertion that transmission solutions for the Grid West footprint must be "appropriate to the unique needs of the Pacific Northwest"<sup>114</sup> and that the Commission will defer to Grid West and its stakeholders to determine the best solutions to any problems the Commission may discover.

As is discussed in the next section, the Commission has shown increasing willingness to apply the *Mobile-Sierra* public interest standard to its future considerations of any contract modifications proposed by itself or third parties under Section 206 of the Federal Power Act. This standard restricts the Commission from requiring modifications

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<sup>113</sup> Operational Bylaws, Section 12.4.3.

<sup>114</sup> Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Docket No. RM01-12-000, White Paper (April 28, 2003) at 4 available at <http://www.ferc.gov/industries/electric/indus-act/smd/white-paper.pdf>.

unless the public interest “imperatively demands” the change.<sup>115</sup> The Commission has even agreed to apply the public interest standard to tariff language.<sup>116</sup> Petitioners request the Commission to declare its willingness and intent to apply the *Mobile-Sierra* public interest standard to changes to Grid West's scope or functions that are proposed by third parties or by the Commission *sua sponte*.

Commitments such as these would provide important comfort to state regulatory commissions concerned about their regulatory jurisdiction and the financial well-being of their jurisdictional utilities, the Northwest congressional delegation concerned about loss of regional control over the federal transmission system, and Bonneville's public power constituents worried about the insertion of complex and potentially expensive pricing and market mechanisms into a system that works today without these market mechanisms.

Petitioners request the Commission to make these commitments.

**5. As a matter of policy, will the Commission accept a provision in Grid West's agreements with Bonneville and other transmission owners providing that certain terms identified as critical to transmission owners' participation will be protected from subsequent Commission-mandated change based on, in Bonneville's case, Bonneville's statutory requirements and the doctrine of sub-delegation, and for all transmission owners the application of the *Mobile-Sierra* standard to certain contract provisions?**

**Petitioners' Views.** As was the case in the RTO West proposal, certain provisions of the agreement between the transmission owners and Grid West for use of the owners' facilities will address arrangements determined by the owners to be necessary for their participation, such as restrictions on Grid West's use of their facilities in order to protect their capital investment, the integrity of their facilities, the safety of their

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<sup>115</sup> *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,177 (2005) (*Commissioner Kelly dissenting*).

<sup>116</sup> See Commissioner Kelly's dissent, *supra* note 118.

employees, and the reliability of their system. Other arrangements may be necessary to meet the owners' legal obligations, such as required protection of their pre-existing contracts, Grid West compliance with laws, treaties, standards, licenses and non-power requirements applicable to an owner's facilities, and the method of collection and allocation of Grid West revenues to the owners. Still other provisions would be incorporated to avoid illegal sub-delegation of Bonneville's statutory responsibilities,<sup>117</sup> such as performance standards that define Grid West's range of freedom in its use of federal facilities, mechanisms that provide meaningful oversight over Grid West's use of federal facilities and effective dispute resolution, and a Bonneville right to terminate its participation in Grid West. And there may be provisions that various owners believe are necessary to win support for the proposal from shareholders and state or provincial authorities. Consequently, the transmission agreement between Grid West and the transmission owners may be replete with provisions that reflect fundamental compromises necessary to permit one or more of the owners to participate in Grid West.

It is necessary and appropriate to protect these critical arrangements from direct modification by the Commission or indirect modification through implementation of conflicting tariff provisions. In the RTO West Order on Rehearing, responding to the applicants' request to reconsider its earlier rejection of a proposal providing that transmission agreement provisions would govern in the event of a conflict with the RTO West tariff, the Commission stated that "we must balance the need to ensure

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<sup>117</sup> In a February 26, 1998 memorandum entitled "Bonneville Power Administration Authority to Participate in an Independent System Operator [("ISO")]," the Department of Energy's Office of General Counsel concluded that, in order for Bonneville to legally participate in an ISO, "the ISO agreement should . . . include performance standards sufficient to enable BPA to assure itself that the ISO is implementing [Bonneville's statutory responsibilities and its contractual and treaty obligations] in a manner consistent with the terms to which BPA has agreed . . . ."

independence of the RTO and operation of an efficient non-discriminatory transmission grid with the legal obligations and interests of the parties joining the RTO.”<sup>118</sup> The Commission indicated its willingness to consider granting supremacy to those transmission agreement provisions “that are essential to meeting members’ legal obligations or affect their ability to participate in the RTO.”<sup>119</sup> The Commission should issue a clear statement that it will allow the protection of provisions essential to the participation of transmission owners from being modified by changes to the Grid West tariff.<sup>120</sup>

The Commission should also state that: (i) Grid West and a transmission owner may agree that they may not amend their contract unless the amendment is signed by both parties; (ii) neither party alone may petition the Commission under Sections 205 or 206 of the Federal Power Act to modify specified provisions; and (iii) absent the parties’ agreement, the standard of review for amendments to those specified provisions proposed under Section 206 by a non-party, or by the Commission acting *sua sponte*, is the *Mobile-Sierra* “public interest” standard. In a recent RTO-NE proceeding, the Commission approved *Mobile-Sierra* protection for a number of provisions of the Transmission Operating Agreement (“TOA”) between the participating transmission owners and RTO-NE.<sup>121</sup>

[T]he TOA sets forth the terms and conditions pursuant to which the Transmission Owners participating in RTO-NE will voluntarily transfer the operational authority over their transmission facilities to RTO-NE. Under these circumstances, we generally think it reasonable, subject to the conditions

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<sup>118</sup> *Avista Corp. et al.*, 101 FERC ¶ 61,346 at P 15 (2002).

<sup>119</sup> *Id.*

<sup>120</sup> Petitioners understand that the Commission cannot eliminate third-party rights under Section 206.

<sup>121</sup> *ISO New England, Inc., et al. v. New England Power Pool*, 106 FERC ¶ 61,280, order accepting partial settlement and on reh’g, 109 FERC ¶ 61,147 (2004).

discussed below, that the Filing Parties be permitted in return for their commitment to rely on the terms of their agreement with the contractual protection afforded by the *Mobile-Sierra* public interest standard of review. . . . [However,] we are required to balance the needs of the Transmission Owners for contractual certainty with the interests properly represented by an RTO . . . These provisions [granted protection] generally address the division of responsibility as between RTO-NE and the Transmission Owners . . . or interests that affect, predominantly, the contracting parties alone. We view these provisions as necessary and appropriate to defining the terms of the agreement between RTO-NE and the Transmission Owners.<sup>122</sup>

In two more recent decisions regarding the Midwest Independent System Operator (“MISO”), the Commission agreed to allow parties to a contract implementing seminal RTO components to impose the *Mobile-Sierra* public interest standard on certain future Commission actions. In a February 18, 2005, Order Approving Contested Settlement, the Commission approved a negotiated provision in a MISO Balancing Authority Agreement that “would subject future changes – whether initiated by a party to the Agreement, a non-party, or the Commission – to the ‘public interest’ standard of review.”<sup>123</sup> The Commission rejected intervenor arguments that allowing the *Mobile-Sierra* standard to govern the Commission's actions was an abrogation of its responsibility under the Federal Power Act to ensure just and reasonable rates and terms of service. Agreeing that the restriction would make it difficult to effect any changes, the Commission nevertheless approved it with the statement that it did “not agree that the restriction is unacceptable.”<sup>124</sup> In a March 16, 2005, order accepting a proposed Seams Operating Agreement between MISO and the Mid-Continent Area Power Pool

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<sup>122</sup> 106 FERC ¶ 61,280 at P 127-128, 130 (2004).

<sup>123</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,177 (*Commissioner Kelly dissenting*) (2005).

<sup>124</sup> *Id.*

("MAPP"), the Commission approved, without discussion, a provision that: (i) prohibited the parties from amending the agreement unless signed by both parties; (ii) prohibited either party from petitioning the Commission under Sections 205 and 206 to order changes to the agreement; and (iii) imposed the *Mobile-Sierra* public interest standard of review for amendments proposed by non-parties or *sua sponte* by the Commission itself.<sup>125</sup>

Petitioners acknowledge the limitation on *Mobile-Sierra* protection enunciated by the Commission in *ISO-New England* referenced above, i.e., that *Mobile-Sierra* protection may be granted where contractual provisions primarily affect the rights and interests of the contracting parties and not those of third-party market participants. Petitioners believe that the provisions for which they will seek *Mobile-Sierra* protection will meet this test. The Commission would also have to recognize that, regardless of *Mobile-Sierra* protection, a required contractual change to Grid West's authority to use nonjurisdictional facilities, such as Bonneville's, would either be ineffective or would terminate Grid West's permission to use the facilities if the change does not have the owner's agreement.

Petitioners request the Commission to affirm its intent to allow protections for those contractual provisions identified as critical to transmission owners' participation, such as those specified above.

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<sup>125</sup> Midwest Independent Transmission Operator, *Order Accepting Seams Operating Agreement, Granting Rehearing in Part and Denying Rehearing in Part*, 110 FERC ¶ 61,290 (2005) at P 25 (*Commissioner Kelly dissenting*) (2005).

6. **If Grid West becomes a public utility that sells transmission service, but not as an RTO, is Commission policy sufficiently flexible to accommodate participating transmission owners continuing as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West?**

**Petitioners' Views.** The Grid West working proposal envisions a new, region-wide transmission service offered by Grid West while participating transmission owners continue to provide service to their pre-existing transmission arrangements under their own contract terms and tariffs. While establishment of a new and independent entity to be responsible for all new service is important to efficient nondiscriminatory operation, preservation of the responsibilities of individual transmission owners to their customers under pre-existing transmission arrangements is not only legally required,<sup>126</sup> but also politically necessary. The Grid West working proposal would meet both of these objectives by maintaining the transmission owners' role as transmission provider for their pre-existing transmission arrangements while establishing a new, region-wide transmission provider responsible for all new transmission service.<sup>127</sup>

The transmission owners will determine the amount of transmission capacity required to serve the pre-existing contracts, including capacity to be reserved for post-Day Ahead schedule changes when allowed by the contracts. Grid West would then determine the amount of flow capacity on the entire Grid West system available for additional transactions under its new flow-based, multi-system service. All day-ahead

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<sup>126</sup> Particularly for non-public utility transmission owners such as Bonneville.

<sup>127</sup> This dynamic is certainly in play in the Northwest; stated simply, a regional transmission entity proposal for the Northwest is viable only if it allows transmission owners to maintain existing contracts. Grid West is being developed under the assumption that the Commission will allow transmission owners to maintain existing contracts since the Commission has refused to modify existing contracts outside the " 'just and reasonable' standard of review or a *Mobile-Sierra* 'public interest' standard of review." *Midwest Indep. Sys. Operator, Inc.* 111 FERC 61,042 at P 17 (2005).

schedules would be submitted to Grid West to provide a clear picture of anticipated flows. Grid West would have responsibility for all decisions about new access requests to the Grid West system. It would establish tariffs for the new services envisioned in the working proposal. Grid West would gradually become responsible for more transmission capacity as additional capacity is added and pre-existing contracts expire. Grid West would also be responsible for determining the amount of rights associated with new transmission construction. Participating transmission owners would be limited to serving pre-existing contracts and obligations.

A critical component of the working proposal is the Grid West Reconfiguration Market. The reconfiguration market is intended to address two of the problems with regional transmission services that were identified by regional stakeholders: (i) rules and practices that prevent full utilization of transmission infrastructure; and (ii) absence of organized market structures that produce efficient use of the system.<sup>128</sup> The Reconfiguration Market will provide an opportunity and incentive for holders of physical transmission rights, whether under pre-existing agreements or new service arrangements, to bid their unused rights<sup>129</sup> into an auction, for periods no longer than one year, to be available to others seeking additional transmission service. Reconfiguring these offers into flow-based injection and withdrawal points and combining them with available flow capacity, Grid West will determine the amount and location of capacity which it can provide to those bidding into the Reconfiguration Market for new injection/withdrawal rights. Offers of unused rights that are accepted would receive the market clearing price. Though it would not prohibit bilateral trades, this centralized Reconfiguration Market

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<sup>128</sup> See [http://www.gridwest.org/Doc/Reference\\_Document\\_Sept52003.pdf](http://www.gridwest.org/Doc/Reference_Document_Sept52003.pdf).

<sup>129</sup> Assuming the underlying contracts allow the rights to be assigned.

should facilitate and encourage the trading of unused transmission rights in the region. In addition, capacity made available by failure to schedule transmission rights at pre-schedule will be made available in the post-Day Ahead market. Petitioners believe these two mechanisms will discourage hoarding of transmission rights.

Of course, the Commission has often indicated its support for preserving existing transmission arrangements, even in the RTO context.<sup>130</sup> Continuation of the transmission owner's role as transmission provider to existing arrangements while a different entity is responsible for new service should be allowed in the context of Order 888. The continuing responsibility of transmission owners to carry out their contractual responsibilities to existing customers is a critical component of the working proposal's acceptability to many customers and simplifies the proposal's implementation. This approach also avoids the time-intensive task of analyzing the components of each pre-existing agreement, converting them to a new service, and working through the disputes that will inevitably arise.

The working proposal, in essence, creates a region-wide, fully independent transmission provider that will take increasing transmission provider responsibility from the existing transmission providers. Petitioners assert that the working proposal would allow for a moderated and cautious development of Grid West's responsibilities as existing contracts expire and customers increasingly turn to Grid West for service. Petitioners request the Commission to declare that retention of participating transmission owners' obligations to serve their existing transmission agreements and limiting Grid

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<sup>130</sup> Order 2000, Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Docket No. RM01-12-000, White Paper (April 28, 2003), 108 FERC ¶ 61,236 at P 150 (2004).

West's responsibilities to the provision of new service is not itself a basis for rejecting the proposal.

7. **Will the Commission acknowledge that Bonneville's participation in Grid West, as a participating transmission owner does not provide the Commission with any authority to modify Bonneville's existing transmission agreements?**

**Petitioners' Views.** There is significant concern among stakeholders, particularly public power stakeholders, that an election by Bonneville to become a participating transmission owner in the Grid West system will grant authority over Bonneville to the Commission that it lacks in the absence of such participation. A topic of particular concern is maintenance of the benefits of pre-existing Bonneville transmission agreements. The Commission has been clear about its lack of authority over pre-existing transmission agreements of nonjurisdictional transmission owners even when the transmission owners elect to participate in a FERC-jurisdictional RTO. In the SMD White Paper,<sup>131</sup> the Commission stated that “[w]hile [FERC] has limited jurisdiction over Bonneville's rates under the Pacific Northwest Electric Power Planning and Conservation Act, the contracts between Bonneville and its customers do not require [FERC] review or approval.” In a recent MISO order,<sup>132</sup> FERC acknowledged its lack of authority over transmission agreements with non-jurisdictional transmission providers:

Finally, we will require the Midwest ISO to carve out of the Energy Markets the 30 GFAs, representing 2,198 MW, for which the transmission provider is not a public utility as defined in section 201 of the FPA. The Commission has no authority to make any modifications to these contracts. . . .

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<sup>131</sup> Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Docket No. RM01-12-000, White Paper (April 28, 2003) at 4.

<sup>132</sup> *Midwest Independent System Operator*, 108 FERC ¶ 61,236 at P 150 (2004).

While Bonneville could lose its reciprocity benefits conferred by the Commission if Bonneville failed to offer services to jurisdictional transmission owners comparable to the services offered by these utilities under their Order 888 OATTs, the Commission does not have jurisdiction to directly order changes to Bonneville's OATT or to any of its transmission agreements.<sup>133</sup> Petitioners request the Commission to confirm its lack of authority to order changes to Bonneville's OATT or to any of its transmission agreements even if Bonneville is a full participant in Grid West.

**8. Will the Commission support implementation, for an indefinite duration, of license plate rates and charges to through and out transactions?**

**Petitioners' Views.** Order 2000 concluded "it is appropriate to allow RTOs to propose the use of license plate rates for a fixed term of the RTO's choosing."<sup>134</sup> However, the order continued that an RTO must make clear how the costs of expansion will be priced and how such pricing affects incentives for efficient expansion.

In a recent PJM-MISO order, the Commission stated the reason for its support of license plate rates:

[T]he Commission has been careful to prevent undue cost shifting among various transmission owners and customers that make up the ISO or RTO. For instance, the Commission has rejected proposals to adopt regional postage stamp pricing for RTOs and ISOs, as this rate design spreads the cost of transmission facilities throughout the region on a regional average basis, resulting in significant cost shifts from higher to lower cost regions.<sup>135</sup>

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<sup>133</sup> The Commission has refused to modify contracts where the transmission provider is not a public utility. Specifically, the Commission "acknowledged that it has no authority to make any modifications to the [Grandfathered Agreements] for which the transmission provider is not a public utility as defined in section 201 of the FPA." *Midwest Indep. Sys. Operator, Inc.* 111 FERC 61,042 at P 92 (2005).

<sup>134</sup> Order 2000, FERC SR ¶ 31,089 at 31,117 (2000).

<sup>135</sup> *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 at P 56 (2004)

The Commission explained that it has generally limited the initial term of license plate rates and has required the RTO and its transmission owners, before the end of the fixed term, “to reevaluate fixed cost recovery policies based on the factual situation of the particular RTO.”<sup>136</sup>

The Commission's policy does not require abandonment of license plate rates at the end of the initial fixed term, but does require the RTO and its transmission owners to justify their choice to continue or discontinue using license plate rates, or otherwise change the method for fixed cost recovery.<sup>137</sup>

In the RTO West proceeding, the Commission approved in concept a license plate pricing proposal (known within RTO West and Grid West as the “Company Rate”) for a minimum period of eight years.<sup>138</sup> The Commission found that the eight-year period would minimize cost shifts and loss of revenues and fostered participation in RTO West. The Commission did not require the Company Rate to be terminated at the end of the eight-year period as the proposal provided for the RTO West board, after eight years, to decide whether to continue Company Rate pricing or propose an alternative pricing mechanism.

Thus, the Commission has adopted a flexible policy regarding the period of application of license plate rates in the RTO context. The Grid West Section 205 filing, however, will not be an RTO filing. Consequently, the requirement to submit a filing at the end of the Company Rate period justifying Grid West's decision about whether to retain or change the license plate approach should not apply to Grid West. In non-RTO circumstances like those of Grid West, the Commission accepted the Southwest Power

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<sup>136</sup> *Id.* at P 57.

<sup>137</sup> *Id.*

<sup>138</sup> *Avista Corp. et al.*, 100 FERC ¶ 61,274 at P 133, *order on reh'g*, 101 FERC ¶ 61,346 (2002).

Pool's proposal for zonal rates because it was voluntarily eliminating rate pancaking and charging a single rate. The Commission stated:

While the Commission has required public utilities forming Independent System Operators (ISOs) to adopt single system rates (after a transition period), SPP is not now seeking approval as an ISO (or Regional Transmission Organization (RTO)). If SPP seeks such approval in the future, SPP will have to comply with any applicable requirements for single-system rates.<sup>139</sup>

In the Grid West context, the Petitioners expect that the Company Rate concept would be applied for the first eight years and would continue unless and until the Operational Board elected to adopt, through a formalized process with the members, another pricing approach. Making the Company Rate approach the default gave important comfort to certain load-serving entities with substantial concerns about disadvantageous cost shifts. Since the Grid West proposal will not be filed under Order 2000, Petitioners desire confirmation from the Commission that license plate pricing, or a pricing methodology consistent with the Company Rate principle is acceptable and that a maximum duration will not be imposed.

The Grid West working proposal envisions embedded costs being collected from transactions leaving the Grid West footprint or moving through and out of it. In the RTO West proceeding, the Commission stated:

Absent the imposition of an export fee or some other mechanism to recover the cost of transmission, customers outside the RTO West footprint would not contribute in the recovery of the cost of the transmission system. . . . In an attempt to avoid cost shifts, Applicants provide the opportunity for users with existing contracts to retain such rights; all new users will be subject to the same rules for exporting power from the RTO West footprint.<sup>140</sup>

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<sup>139</sup> *Southwest Power Pool Inc.*, 89 FERC ¶ 61,284 at 61,889 (1999).

<sup>140</sup> *Avista Corp et al.*, 100 FERC ¶ 61,274 at P 136 (2002).

The Grid West proposal is also intended to avoid cost shifts. However, as opposed to the RTO West proceeding in which an export rate was approved in concept on a transitional basis,<sup>141</sup> Grid West would use a physical rights system, not a financial rights system. Consequently, customers with pre-existing rights to schedule exports or throughput would continue to pay their share of embedded costs through the rates applicable to those contracts, and customers desiring to schedule new export and throughput transactions would need to purchase the necessary physical transmission rights. Those rights could be obtained either through the Reconfiguration Market (for service of one year or less) or through purchase of long-term rights from available flow capacity (if any) or from expansion projects. Rights holders who offer transmission rights in the Reconfiguration Market would continue to pay the applicable rates, including embedded costs, even after the rights have been traded to others. Rates for new long-term export and throughput service would also collect their share of embedded costs, though it is not yet known whether those rates would be the Company Rate of the particular owner whose facilities are used at the boundary or a blended average of all the Company Rates applicable to border facilities.<sup>142</sup>

As stated above, the Grid West Section 205 filing will not request approval under Order 2000. Thus, the Commission's RTO requirement that rates for exports and throughputs apply only for a transitional period should not apply. A more applicable model is that of the recent Entergy proposal,<sup>143</sup> and the Southwest Power Pool prior to

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<sup>141</sup> *Id.*

<sup>142</sup> The Grid West Pricing Work Group is currently developing proposals to address this and other issues related to the pricing of Grid West services, given the proposed physical rights construct. In particular, the Pricing Work Group is evaluating the appropriateness of export fees. The resulting proposals will be vetted within the RRG and within the region sometime this summer.

<sup>143</sup> *Entergy Services, Inc.*, 110 FERC ¶ 61,295 (2005).

becoming an RTO.<sup>144</sup> In the latter case, the Commission approved, without raising the issue of pancaked charges or imposing a transitional requirement, a proposal to apply an embedded cost rate on service out of the Southwest Power Pool area. Petitioners request the Commission to clarify that Grid West rates for exports or throughput would not be limited to a transition period.

## VII. REQUEST FOR RELIEF

Petitioners request the Commission to issue a declaratory order to the effect that:

1. Assuming Grid West seeks approval under Section 205 of the Federal Power Act to offer regional transmission service pursuant to an open access tariff, but not as an Order 2000 RTO, the Commission will treat Grid West's application as one that must satisfy the open access requirements of Order 888 (that is, offering services consistent with or superior to the *pro forma* OATT requirements) rather than the requirements for RTO status.
2. Grid West's governance structure as embodied in its Operational Bylaws satisfies the independence requirements of Order No. 2000.
3. Regarding withdrawal rights:
  - a. The Commission will approve a contract between Grid West and Bonneville that allows Bonneville to withdraw as a participating transmission owner without Commission approval.
  - b. A participating transmission owner that is a public utility will be able to terminate its contractual arrangements with Grid West under conditions that the Commission determines are just and reasonable.
4. If Grid West becomes a public utility that sells transmission service but not as an RTO, Grid West will not thereafter be required to comply with Order 2000 requirements or Standard Market Design approaches.
5. The Commission, as a matter of policy, will accept a provision in Grid West's agreements with Bonneville and other transmission

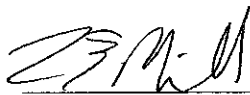
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<sup>144</sup> *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,889 (1999).

owners providing that certain terms identified as critical to transmission owners' participation will be protected from subsequent Commission-mandated change based on, in Bonneville's case, Bonneville's statutory requirements and the doctrine of sub-delegation, and for all transmission owners the application of the *Mobile-Sierra* standard to certain contract provisions.

6. If Grid West becomes a public utility that sells transmission service but not as an RTO, Commission policy is sufficiently flexible to accommodate participating transmission owners continuing as transmission providers for their pre-existing transmission agreements, including OATT service, while new service is made available only through Grid West.
7. The Commission acknowledges that Bonneville's participation in Grid West, as a participating transmission owner, does not provide the Commission with any authority to modify Bonneville's existing transmission agreements.
8. The Commission does support implementation, for an indefinite duration, of license plate rates and the application of embedded cost charges to through and out transactions.

DATED this 28th day of April, 2005

 signing  
for Steve Larson

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Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the forgoing Petition of Bonneville Power Administration, PacifiCorp and Idaho Power Company for Declaratory Order Relating to the Development of Grid West, a Proposed Transmission Provider to the individuals below via prepaid first-class mail:


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DATED at Portland, Oregon, this 28th day of April, 2005.

 signing for *Steve Larson*

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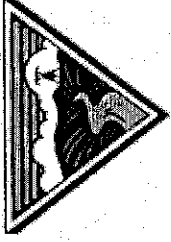
## Attachment A

Timeline for Grid West Development through Decision Point 4

This chart shows the decision points for Grid West development.

Timeline for Developmental Board Seating

This chart, contained in the Grid West's Regional Representatives Group's "Work Plans for 2005," presents a schedule detailing required goals to reach Decision Point 2, in which a Developmental Board must be seated.



IR Technical  
Seminar 4/7/05

# Developmental Stage

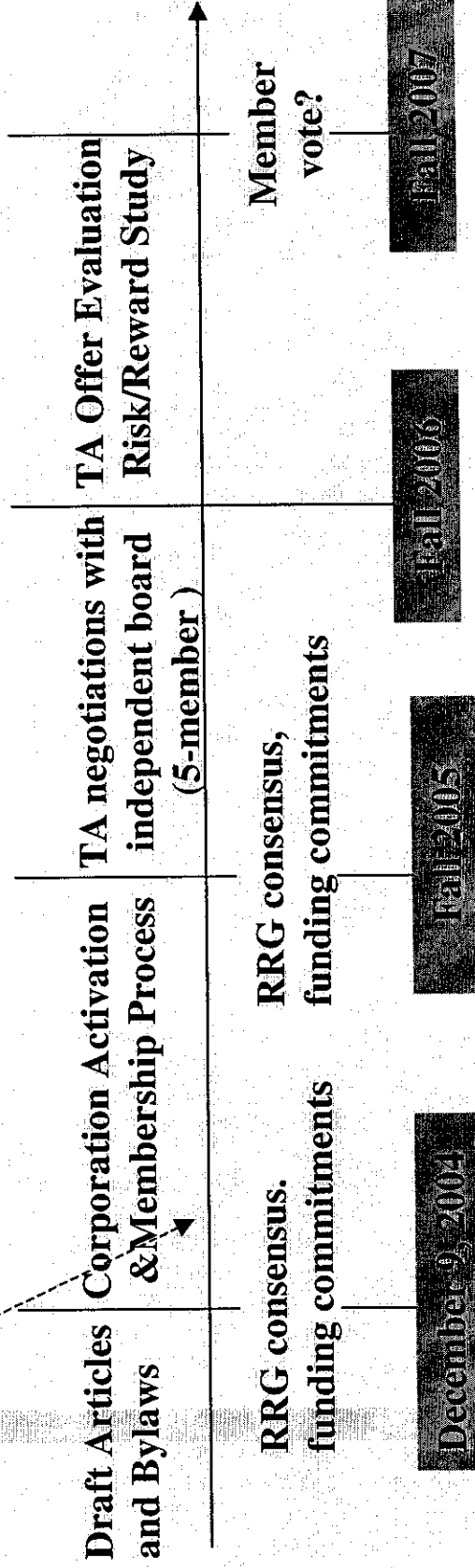
We are here

**Decision Point #1**  
(adopt Developmental Bylaws)

**Decision Point #2**  
(elect 5-member independent board)

**Decision Point #3**  
(Grid West offers TA)

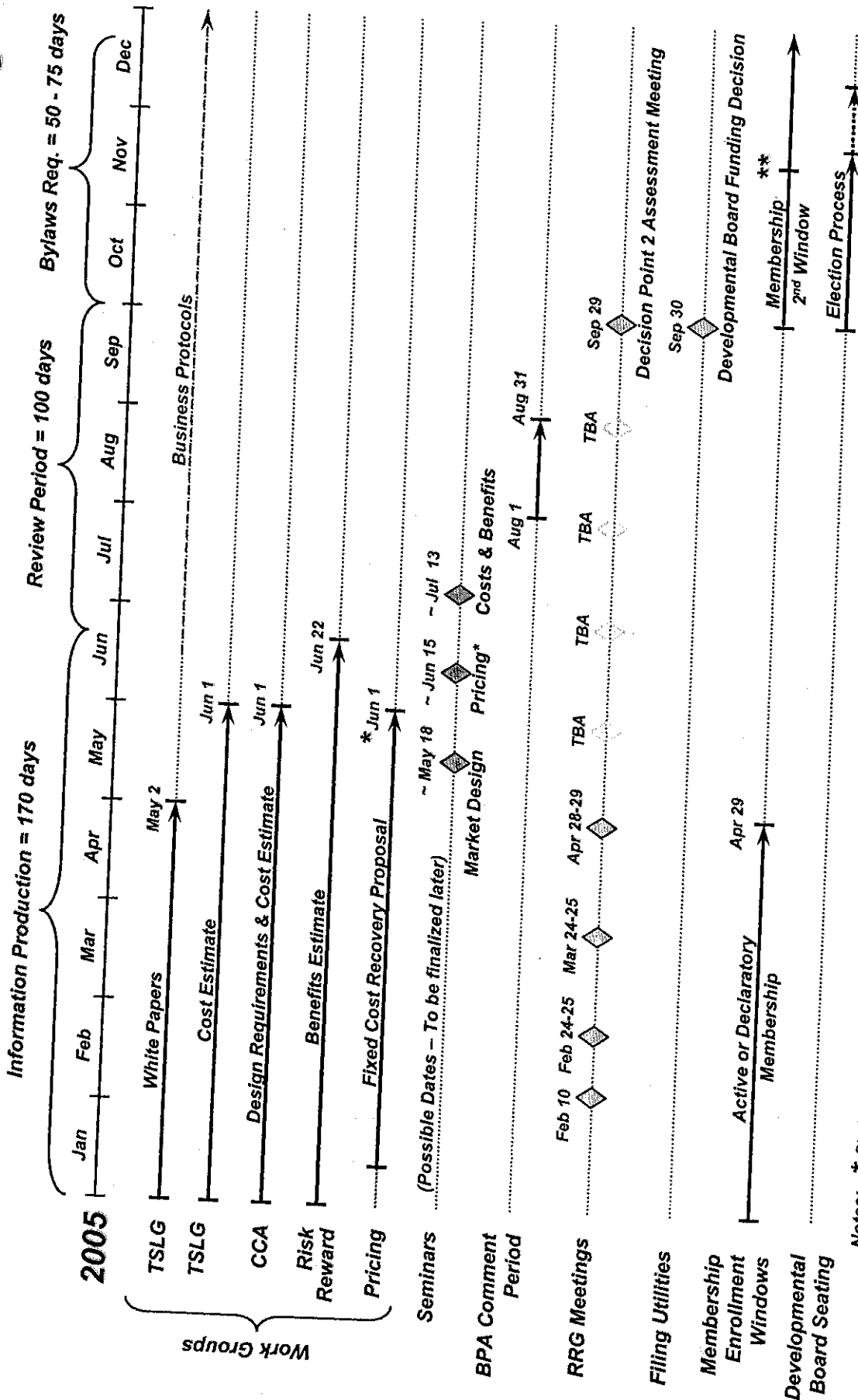
**Decision Point #4**  
(adopt Operational Bylaws)



**BPA process** | **BPA process** | **Open TA negotiations** | **BPA ROD process on TA** | **TA signed**



# Timelines for Developmental Board Seating



Notes: \* Start and end dates for Pricing Work Group are tentative. Final dates will be established by the work group after it is functioning.  
\*\* Parties that apply during the second window cannot be sure of admission before the "record date" (which occurs seven days before the first members' meeting) that will determine parties eligible to vote for initial MRC representatives.

## **Attachment B**

Attachment B consists of the Grid West Developmental Bylaws as executed on December 10, 2004, which include the following exhibits:

Exhibit A - Employees Conduct Rules

Exhibit B1 - Conduct Rules for Interim Board of Trustees

Exhibit B2 - Conduct Rules for Developmental Board of Trustees

Exhibit C - List of Regional Representatives Group Members

Exhibit D - Operational Bylaws

Exhibit E - Examples of Reallocation and Tabulation of Member Votes

*December 10, 2004*

**DEVELOPMENTAL BYLAWS  
FOR  
GRID WEST**

# TABLE OF CONTENTS

	<u>Page</u>
Article I General Provisions .....	1
1.1 Defined Terms .....	1
1.1.1 Affiliate .....	1
1.1.2 Articles of Incorporation .....	1
1.1.3 Certain Public Interest Group .....	1
1.1.4 Consumer Advocate .....	2
1.1.5 Corporation .....	2
1.1.6 Developmental Board of Trustees .....	2
1.1.7 Developmental Bylaws .....	2
1.1.8 Developmental Stage .....	2
1.1.9 End-Use Consumer .....	2
1.1.10 FERC .....	2
1.1.11 FPA .....	2
1.1.12 Funding Agreement .....	2
1.1.13 Generator .....	3
1.1.14 Generators, Power Marketers, Large Generating End-Use Consumers, and Others .....	3
1.1.15 Geographic Area .....	4
1.1.16 Governmental Committee .....	4
1.1.17 Grid West Website .....	4
1.1.18 Indemnatee .....	4
1.1.19 Independent Transmission Company .....	4
1.1.20 Interim Board of Trustees .....	4
1.1.21 Large Bundled End-Use Consumer .....	4
1.1.22 Large Generating End-Use Consumer .....	5
1.1.23 Large TDU .....	5
1.1.24 Large Unbundled End-Use Consumer .....	6
1.1.25 Major Transmitting Utility .....	7
1.1.26 Market Participant .....	7
1.1.27 Member .....	7
1.1.28 Member Class .....	8
1.1.29 Member Sub-Class .....	8
1.1.30 Members Representative Committee .....	8
1.1.31 NWPCC .....	8
1.1.32 Operational Board of Trustees .....	8
1.1.33 Operational Bylaws .....	8
1.1.34 Operational Stage .....	8
1.1.35 Participating Jurisdiction .....	8
1.1.36 Person .....	8
1.1.37 Power Marketer .....	8
1.1.38 Proceeding .....	8
1.1.39 RCW .....	8

## TABLE OF CONTENTS

	<u>Page</u>
1.1.40 Regional Representatives Group .....	8
1.1.41 Related Person .....	9
1.1.42 Small TDU .....	9
1.1.43 State or Provincial Energy Authority .....	9
1.1.44 Transmission-Dependent Utility.....	9
1.1.45 Transmission Agreements .....	9
1.1.46 Tribe.....	9
1.1.47 Trustee .....	10
Article II Offices .....	10
Article III Purposes and Limitations .....	10
3.1 Purposes .....	10
3.1.1 Purposes During Developmental Stage .....	10
3.1.2 Regional Transmission Plan and Planning .....	10
3.2 Limitations .....	11
Article IV Regional Consultation.....	11
4.1 Consultation with the Regional Representatives Group .....	11
4.1.1 Structure and Procedures Adopted by Regional Representatives Group .....	11
4.1.2 Regional Representatives Group Meetings .....	12
4.1.3 Response to Requests for Information and Status Reports.....	12
4.1.4 Required Consultation with Regional Representatives Group .....	12
4.2 Consultation with Governmental Committee .....	12
4.2.1 Formation of the Governmental Committee .....	13
4.2.2 Meetings of the Governmental Committee.....	13
4.3 Additional Regional Meetings .....	13
4.4 Consultation Notices.....	13
Article V Members.....	13
5.1 Powers and Rights of Members .....	13
5.1.1 Exclusive Member Rights.....	14
5.1.2 Nonexclusive Member Rights and Powers.....	14
5.1.3 Additional Member Rights.....	14
5.2 Classes of Members .....	14
5.2.1 Identification of Member Classes.....	14
5.2.2 Member Class Assignment Rules.....	15
5.3 Qualifications and Admission of Members .....	17
5.3.1 General Qualifications for Membership.....	17
5.3.2 Voting and <i>Ex Officio</i> Members from States and Provinces.....	17
5.3.3 Membership of Tribes.....	17
5.3.4 Procedures for Application.....	18
5.3.5 Notice of Acceptance of Membership.....	18
5.3.6 Certain Limitations on Membership.....	18
5.3.7 List of Members.....	18
5.3.8 Member's Right to Replace Authorized Representative.....	18

## TABLE OF CONTENTS

	<u>Page</u>
5.3.9 Member Obligation to Report Changes in Qualification; Disqualification and Redesignation of Member Class. ....	18
5.4 Admission by Interim Board.....	19
5.4.1 Membership Admissions Committee .....	19
5.4.2 Membership Dispute Resolution Committee.....	19
5.4.3 Initial Membership Application Window.....	19
5.4.4 Declaratory Membership Option During Initial Membership Application Window.....	20
5.4.5 Challenges to Applications .....	20
5.4.6 Second Application Window Before Election of Developmental Board.....	21
5.4.7 Recognition of Representatives Authorized to Vote .....	21
5.5 Admission by Developmental Board .....	21
5.5.1 Applications After Election of Developmental Board.....	21
5.5.2 Notice and Opportunity to Challenge .....	22
5.6 Challenges to Membership or Member Class Qualifications .....	22
5.7 Termination of or Withdrawal from Membership .....	23
5.7.1 Termination for Failure to Pay Membership Fees .....	23
5.7.2 Withdrawal from Membership. ....	23
5.8 Establishment of Record Date for Member Votes .....	23
5.9 Meetings of Members .....	24
5.9.1 Biannual Member Meetings. ....	24
5.9.2 Special Member Meetings. ....	24
5.10 Notice of Meetings of Members .....	25
5.10.1 Timing and Manner of Notices. ....	25
5.10.2 Effect of Lack of Notice and Agenda Changes. ....	25
5.10.3 Public Notice of Member Meetings.....	25
5.11 Open Member Meetings .....	26
5.12 Member Waivers of Notice.....	26
5.13 Quorum Rules .....	26
5.13.1 Quorum Rules for Binding Member Votes (Except to Fill Members Representative Committee Vacancies and to Remove Members Representative Committee Members) .....	26
5.13.2 Quorum Rules for Meetings of Member Classes or Member Sub- Classes to Remove Members of the Members Representative Committee and to Fill Vacancies.....	27
5.13.3 Quorum Rules for Member Advisory Votes .....	28
5.14 Voting of Members (Other Than Advisory Votes).....	28
5.14.1 General Voting Rules .....	28
5.14.2 Membership Thresholds .....	29
5.14.3 Initial Allocation of Voting Power .....	30
5.14.4 Allocation of Voting Power When Member Class Has Zero Members or When Member Sub-Class Thresholds Are Not Met .....	32

# TABLE OF CONTENTS

	<u>Page</u>
5.14.5 Tabulation of Member Override Votes.....	37
5.14.6 Tabulation of Member Votes to Approve Bylaws Amendments .....	37
5.14.7 Tabulation of Member Votes to Elect Members Representative Committee Members .....	37
5.14.8 Tabulation of Other Member Votes.....	38
5.15 Member Advisory Votes Conducted by the Board of Trustees .....	38
5.16 Restrictions on Transfer.....	38
5.17 Effect of Membership .....	38
Article VI Members Representative Committee .....	38
6.1 Powers and Rights of Members Representative Committee Members .....	38
6.1.1 Exclusive Members Representative Committee Rights and Powers.....	38
6.1.2 Nonexclusive Members Representative Committee Rights and Powers.....	39
6.2 Number of Members Representative Committee Members .....	39
6.3 Election of Members Representative Committee Members .....	39
6.3.1 Member Rights to Elect Members Representative Committee Members. ....	39
6.3.2 General Rule for Election of Members Representative Committee Members. ....	39
6.3.3 Special Rules for Election of Members Representative Committee Members when Thresholds Not Met or Zero Members. ....	42
6.3.4 Notice of Members Representative Committee Election Meetings .....	43
6.3.5 Vote to Elect Members Representative Committee Members. ....	43
6.4 Procedures in Election of Members Representative Committee Members .....	44
6.4.1 Election of First Full Members Representative Committee .....	44
6.4.2 Member Participation in Members Representative Committee Nominations and Elections. ....	44
6.5 Term of Office of Members Representative Committee Members .....	45
6.6 Resignation or Removal of Members Representative Committee Members; Vacancies.....	45
6.7 Meetings of the Members Representative Committee .....	45
6.7.1 First Members Representative Committee Meeting. ....	45
6.7.2 Regular and Special Members Representative Committee Meetings. ....	45
6.7.3 Permitted Means of Members Representative Committee Meeting Participation. ....	45
6.7.4 Members Representative Committee Action by Consent in Writing. ....	45
6.7.5 Members Representative Committee Meeting Minutes. ....	46
6.8 Notice of Members Representative Committee Meetings .....	46
6.9 Closed Meetings of Members Representative Committee.....	46
6.10 Waivers of Members Representative Committee Meeting Notice .....	46

# TABLE OF CONTENTS

	<u>Page</u>
6.11 Quorum of Members Representative Committee Members .....	46
6.12 Voting of Members Representative Committee Members .....	46
6.13 Subcommittees of Members Representative Committee .....	47
Article VII Board of Trustees.....	47
7.1 Interim Board of Trustees .....	47
7.1.1 Purposes and Authorities; Mandatory Reorganization.....	47
7.1.2 Interim Board of Trustees Members .....	47
7.1.3 Interim Board Term .....	48
7.1.4 Vacancies .....	48
7.1.5 Compensation of Interim Board Trustees .....	48
7.1.6 Prohibition Against Gifts and Loans to Interim Board Trustees .....	48
7.1.7 Interim Board of Trustees Conduct Rules .....	48
7.1.8 Notice of Meetings of the Interim Board of Trustees .....	48
7.1.9 Waivers of Interim Board Meeting Notice .....	48
7.1.10 Attendance at Meetings .....	48
7.1.11 Quorum of Interim Board Trustees.....	48
7.1.12 Voting of Interim Board Trustees .....	49
7.1.13 Establishment of Developmental Board .....	49
7.1.14 Interim Board of Trustees Amendment of Developmental Bylaws .....	50
7.2 Developmental Board of Trustees.....	51
7.2.1 Powers of the Developmental Board of Trustees .....	51
7.2.2 Specific Authorities .....	51
7.2.3 Developmental Board Members .....	51
7.2.4 Developmental Board Term .....	52
7.2.5 Adoption of Operational Bylaws .....	52
7.2.6 Amendment of Developmental Bylaws .....	52
7.2.7 Election of Developmental Board of Trustees.....	52
7.3 Resignation or Removal of Developmental Board Trustees; Vacancies .....	54
7.4 Meetings of the Developmental Board of Trustees .....	55
7.4.1 Quorum of Developmental Board of Trustees.....	55
7.4.2 Scheduled Meetings of Developmental Board of Trustees .....	55
7.4.3 Regular and Special Meetings of the Developmental Board of Trustees .....	55
7.4.4 Permitted Means of Trustee Meeting Participation.....	55
7.4.5 Board Action by Consent in Writing.....	55
7.4.6 Board Meeting Minutes .....	56
7.5 Notice of Developmental Board of Trustees Meetings.....	56
7.5.1 Notice Requirements of Regular and Special Board Meetings .....	56
7.5.2 Public Notice and Closed Sessions of the Board .....	56
7.6 Open Board Meetings .....	57
7.7 Waivers of Developmental Board Meeting Notice.....	57
7.8 Quorum of the Developmental Board of Trustees .....	57
7.9 Voting of the Developmental Board Trustees .....	57

# TABLE OF CONTENTS

	<u>Page</u>
7.10 Individuals Who Are Prohibited from Serving as Developmental Board Trustees .....	58
7.10.1 Prohibited Individuals.....	58
7.10.2 Exceptions Concerning Prohibited Individuals .....	58
7.11 Continuing Restrictions on Former Developmental Board Trustees .....	59
7.11.1 General Restrictions .....	59
7.11.2 Exceptions Concerning Continuing Restrictions .....	60
7.12 Standard of Care.....	60
7.12.1 General Standard for Decisions .....	60
7.12.2 Reliance on Information .....	60
7.12.3 Conduct Rules.....	61
7.12.4 Independence from Market Participants .....	61
7.13 Prohibition Against Gifts and Loans to Developmental Board Trustees.....	61
7.14 Inspection Rights.....	61
7.15 Compensation of Developmental Board Members .....	61
7.15.1 Authorized Base Compensation and Additional Compensation .....	61
7.15.2 Reimbursement of Expenses.....	62
7.15.3 Prohibition Against Trustees Being an Officer, Employee, or Consultant .....	62
Article VIII Committees of the Developmental Board of Trustees .....	62
8.1 Committees of Trustees .....	62
8.2 Advisory Committees .....	63
8.2.1 Consideration of Tariff Committee .....	63
8.2.2 Tariff Committee .....	63
8.3 Meetings.....	63
Article IX Officers and Staff.....	64
9.1 Officers.....	64
9.2 Appointment.....	64
9.3 Removal.....	64
9.4 Resignation.....	64
9.5 President.....	64
9.6 Vice President .....	64
9.7 Secretary.....	65
9.8 Treasurer .....	65
9.9 Additional Officers .....	65
9.10 Compensation; Prohibition Against Loans .....	65
9.10.1 Compensation Determined by the Board.....	65
9.10.2 Prohibited Loans; Permitted Advances .....	65
9.11 Execution of Instruments .....	65
9.12 Staffing.....	65
9.13 Conduct Rules.....	66
Article X Records.....	66
10.1 Records Available for Inspection.....	66

## TABLE OF CONTENTS

	<u>Page</u>
10.1.1 Records .....	66
10.1.2 Member Inspection of Records.....	66
10.2 Financial Records.....	67
10.2.1 Annual Financial Statements .....	67
10.2.2 Accountant's Review of Financial Statements .....	67
10.2.3 Reports Concerning Financial Status .....	67
10.3 Records Retention.....	68
Article XI Indemnification of Trustees, Officers, Employees, and Agents .....	68
11.1 Liability of Trustees; Indemnification Rights of Members of the Developmental Board of Trustees and Certain Officers .....	68
11.1.1 Limits on Liability of Trustees .....	68
11.1.2 Indemnification of Trustees .....	68
11.2 Indemnification of Employees and Agents .....	68
11.3 Procedure for Seeking Indemnification or Advancement of Expenses .....	69
11.3.1 Notification and Defense of Claim .....	69
11.3.2 Information to Be Submitted and Method of Determination and Authorization of Indemnification .....	70
11.3.3 Special Procedure Regarding Advance for Expenses.....	70
11.3.4 Settlement .....	71
11.4 Contract and Related Rights .....	71
11.4.1 Contract Rights .....	71
11.4.2 Optional Insurance, Contracts, and Funding .....	71
11.4.3 Severability .....	71
11.4.4 Right of Indemnatee to Bring Suit .....	72
11.4.5 No Presumption .....	72
11.5 Exceptions to Corporation's Obligations .....	72
Article XII Miscellaneous .....	73
12.1 Meetings Related to Negotiation of Transmission Agreements .....	73
12.2 Member Vote Related to Adoption of Operational Bylaws.....	73
12.2.1 Operational Bylaws Business Plan.....	73
12.2.2 Member Right to Vote on Adoption of Operational Bylaws.....	73
12.2.3 Conduct of Member Vote .....	74
12.3 Fiscal Year .....	74
12.4 Corporation Seal .....	74
12.5 Notices .....	74
12.6 Distribution of Net Assets upon Dissolution .....	74
Article XIII Sunset and Termination .....	75
13.1 Deadline to Offer Transmission Agreements.....	75
13.2 Deadline for Execution of Transmission Agreements .....	75
13.3 Board Discretion to Dissolve Corporation for Lack of Progress .....	75
13.4 Actions Triggering Regulatory Jurisdiction Voided.....	75
13.5 Dissolutions Pursuant to Sections 13.1 through 13.4 .....	76

TABLE OF CONTENTS

Page

EXHIBITS

<u>Exhibit A</u>	<u>Employees Conduct Rules</u>
<u>Exhibit B1</u>	<u>Conduct Rules for Interim Board of Trustees</u>
<u>Exhibit B2</u>	<u>Conduct Rules for Developmental Board of Trustees</u>
<u>Exhibit C</u>	<u>List of Regional Representatives Group Members</u>
<u>Exhibit D</u>	<u>Operational Bylaws</u>
<u>Exhibit E</u>	<u>Examples of Reallocation and Tabulation of Member Votes</u>

## ARTICLE I

### GENERAL PROVISIONS

1.1 Defined Terms. For purposes of these Developmental Bylaws, the following terms shall be defined as follows:

1.1.1 "Affiliate" of a Person means a Person that directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with such Person. For purposes of these Developmental Bylaws, in determining whether one (1) Person controls another Person, without limitation, the direct or indirect ownership or control of or power to vote five percent (5%) or more of the outstanding voting securities of a corporation shall be deemed to constitute control of such corporation; provided, however, that in the case of any Person that is a public utility that owns an interest in an Independent Transmission Company and has divested ownership of its electric transmission system, such Person and the Independent Transmission Company shall not be considered Affiliates. In addition, for purposes of these Developmental Bylaws:

(i) members of any cooperative corporation shall not, merely by virtue of membership in such corporation, be deemed to be Affiliates of each other or of the cooperative corporation;

(ii) members of any joint operating agency, joint powers authority, joint operating entity, or comparable entity shall not, merely by virtue of membership in such joint operating agency, joint powers authority, joint operating entity, or comparable entity, be considered Affiliates of each other or of the joint operating agency, joint powers authority, joint operating entity, or comparable entity;

(iii) separate agencies of a state, a province, or the federal government shall not be considered Affiliates, regardless of any commonality of political control; and

(iv) no Crown-owned utility shall be considered an Affiliate of any State or Provincial Energy Authority.

1.1.2 "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as amended from time to time.

1.1.3 "Certain Public Interest Group" is any entity that

(i) is a public interest membership organization that is qualified under Section 501(c)(3) of the Internal Revenue Code (or, for Canadian organizations, analogous Canadian law);

(ii) is an environmental organization, demand-side management advocacy organization, energy efficiency advocacy organization, or renewable energy advocacy organization;

(iii) has an office within the Geographic Area; and

(iv) is not a Member of any of the following:

(a) Member Classes: Major Transmitting Utilities; Transmission-Dependent Utilities; Generators, Power Marketers, Large Generating End-Use Consumers, and Others; or End-Use Consumers; or

(b) Member Sub-Classes: State or Provincial Energy Authority; or Tribes.

1.1.4 "Consumer Advocate" means a Person that has been recognized, designated, or funded by or through applicable law or a State or Provincial Energy Authority (or other agency of a Participating Jurisdiction) for purposes of representing the interests of end-use consumers in regulatory proceedings within the applicable Participating Jurisdiction.

1.1.5 "Corporation" means Grid West, a Washington nonprofit corporation formed under the Washington Nonprofit Corporation Act, RCW Chapter 24.03, formerly known as RTO West.

1.1.6 "Developmental Board of Trustees" or "Developmental Board" means the Board of Trustees of the Corporation (other than the Interim Board of Trustees) during the time these Developmental Bylaws are in effect, which may, subject to the Operational Bylaws, continue to serve until the Operational Board is elected.

1.1.7 "Developmental Bylaws" means these bylaws that govern the activities of the Interim and Developmental Boards of Trustees.

1.1.8 "Developmental Stage" means the period of time, expected to be twenty-four (24) months or less, that these Developmental Bylaws are in effect.

1.1.9 "End-Use Consumer" means a Large Bundled End-Use Consumer, a Large Unbundled End-Use Consumer, or a Consumer Advocate.

1.1.10 "FERC" means the Federal Energy Regulatory Commission, or any successor agency.

1.1.11 "FPA" means the Federal Power Act, 16 USC § 792, et seq., as amended from time to time.

1.1.12 "Funding Agreement" means that certain funding agreement that is effective as of the election of the Developmental Board of Trustees and continues for up to twenty-four (24) months of the Developmental Stage and that is entered into by the Corporation and three (3) or more Major Transmitting Utilities, including the Bonneville Power

Administration, to fund the Corporation's activities following the election of the Developmental Board of Trustees.

1.1.13 "Generator" means any entity, including, but not limited to,

(i) an Exempt Wholesale Generator ("EWG") as such term is defined in Section 32(a)(1) of the Public Utility Holding Company Act of 1935, 15 USC § 79z-5a(a)(1);

(ii) an Independent Power Producer, which means any nonutility generator that is involved in the ownership or operation of one or more electric generating facilities on a merchant plant basis;

(iii) a Qualifying Small Power Producer as such term is defined in Section 3(17)(D) of the FPA, 16 USC § 796(17)(D); or

(iv) a Qualifying Cogenerator as such term is defined in Section 3(18)(C) of the FPA, 16 USC § 796(18)(C),

that is not a Large Generating End-Use Consumer and that owns, leases, or otherwise exercises operational control over one (1) or more electric generating facilities (including any electric generating facilities on which significant construction has been completed) that

(a) have (or, upon completion of construction and commencement of commercial operation, will have) an aggregate net generating capacity of not less than ten (10) MW; and

(b) are (or, upon completion of construction and commencement of commercial operation, will be) either located in or dynamically scheduled into the Geographic Area;

provided, however, that no Power Marketer shall be deemed to be a Generator solely by virtue of its exercise of the right to direct the production of any electric generating facility that is physically controlled by an unaffiliated owner or operator.

1.1.14 "Generators, Power Marketers, Large Generating End-Use Consumers, and Others" means any entity (including, but not limited to, any Generator, Large Generating End-Use Consumer, or Power Marketer), other than a Major Transmitting Utility, Transmission-Dependent Utility, State or Provincial Energy Authority, Tribe, or Certain Public Interest Groups, and other than an End-Use Consumer (except as provided by Section 5.2.2(iii)), that is

(i) engaged in purchases or sales of electric power that is scheduled for delivery within, into, or from the Geographic Area; and

(ii) entitled to apply to FERC for an order requiring interconnection or transmission services pursuant to Sections 210 or 211 of the FPA, or that would be entitled to apply for such an order were it doing business within the United States, or that is a marketing affiliate of any such non-U.S. entity seeking transmission services, or that receives interconnection or transmission services from a Canadian transmission provider.

1.1.15 "Geographic Area" means the portions of the provinces of Alberta and British Columbia and of the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming that are electrically within the Western Interconnection, together with any additional geographic territory within the state of California that is encompassed by the control areas of the Bonneville Power Administration, PacifiCorp, and Sierra Pacific Power Company as of the effective date of these Developmental Bylaws.

1.1.16 "Governmental Committee" has the meaning specified in Section 4.2.

1.1.17 "Grid West Website" means an Internet site through which the Corporation makes available information and notices concerning its business, operations, and services.

1.1.18 "Indemnitee" means an individual made a party to a proceeding because the individual is or was an officer, employee, or agent of the Corporation, or a member of the Developmental Board of Trustees, and who possesses indemnification rights pursuant to the Articles of Incorporation, these Developmental Bylaws, or other corporate action. An employee or agent shall not be considered an Indemnitee pursuant to the Articles of Incorporation or these Developmental Bylaws unless the Developmental Board has exercised its power to provide indemnification to employees and agents generally or with respect to the particular employee or agent involved in the proceeding. "Indemnitee" shall also include the heirs, executors, and other successors in interest of such individuals.

1.1.19 "Independent Transmission Company" means a transmission company meeting the independence requirements established by FERC Order No. 2000, 89 FERC ¶ 61,285 (Dec. 20, 1999), and all supplements and amendments thereto issued by FERC.

1.1.20 "Interim Board of Trustees" or "Interim Board" means the Interim Board of Trustees as defined in Section 7.1.

1.1.21 "Large Bundled End-Use Consumer" means an end-use consumer of electric power that

(i) is not a Member of any of the following Member Classes: Major Transmitting Utilities; Transmission-Dependent Utilities; Generators, Power Marketers, Large Generating End-Use Consumers, and Others (except as otherwise permitted under Section 5.2.2(iii)); or State and Provincial Energy Authority/Tribes/Certain Public Interest Groups;

(ii) individually and together with all of its Affiliates had, during the calendar year immediately preceding the relevant time, an aggregate retail electric load (not including electrical load for generator start-up or station service purposes) within the Geographic Area greater than or equal to five (5) aMW; and

(iii) purchases more than half of its power supply consumed within the Geographic Area solely from its legally authorized local electric or distribution utility(ies); provided, however, that if there is a pending dispute concerning the authority of its local electric or distribution utility(ies) to provide local electric or distribution service to the applicant or Member, then the applicant or Member shall be assigned to the Member Sub-Class designated (Large Bundled End-Use Consumer or Large Unbundled End-Use Consumer) on the application pending resolution of the dispute. Thereafter, the Secretary of the Corporation shall assign the Member to the Member Class or Member Sub-Class consistent with the resolution of the dispute concerning the authority of its local electric or distribution utility(ies) to provide local electric or distribution service by settlement of the parties or by a court with jurisdiction; provided, however, that nothing in this Section 1.1.21(iii) precludes challenges on other grounds under Section 5.4.5 or resulting reassignment.

1.1.22 "Large Generating End-Use Consumer" means a Large Bundled End-Use Consumer or a Large Unbundled End-Use Consumer that owns and operates in the Geographic Area one (1) or more Qualifying Cogeneration Facilities (as such term is defined in 16 USC § 796(18)(B)) that

(i) have an aggregate net generating capacity of not less than ten (10) MW; and

(ii) are in each instance located in proximity to, and electrically interconnected with, one (1) or more manufacturing or other industrial production facilities of such consumer at which electric power is consumed on an end-use basis.

1.1.23 "Large TDU" means a member of the group of those Transmission-Dependent Utilities that, when taken together, make up the minimum number of Transmission-Dependent Utilities that can account for at least fifty percent (50%) of the total amount (measured by MW-hours delivered) of Qualifying Load served by all Transmission-Dependent Utilities during the preceding year ("Total Qualifying Load"). For purposes of this definition, "Qualifying Load" means

(i) retail load (sales not for resale), including energy delivered to an end-use customer located in the service area of the delivering Transmission-Dependent Utility that is not purchased from such delivering utility; and

(ii) a Transmission-Dependent Utility's wholesale sales to its members, if the Transmission-Dependent Utility is a joint operating agency, joint operating entity, generation and transmission cooperative, or comparable entity.

Those Transmission-Dependent Utilities that are to be designated as Large TDUs are identified by establishing a rank order of all Transmission-Dependent Utilities that are Members, with the Transmission-Dependent Utility that served the largest amount of the Total Qualifying Load ranked first, the Transmission-Dependent Utility that served the second-largest amount of the Total Qualifying Load ranked second, and so forth. The minimum number of Transmission-Dependent Utilities that can together account for at least fifty percent (50%) of the Total Qualifying Load is determined by beginning with the Transmission-Dependent Utility that served the largest amount of the Total Qualifying Load and continuing down through the ranking, including all Transmission-Dependent Utilities (but no more than those) necessary to account for at least fifty percent (50%) of the Total Qualifying Load. Any Transmission-Dependent Utility that would otherwise be a Small TDU shall be a Large TDU if the Transmission-Dependent Utility is a joint operating agency, joint operating entity, generation and transmission cooperative, or comparable entity with Qualifying Load greater than one million two hundred fifty thousand (1,250,000) MW-hours during the preceding year. In addition, a Transmission-Dependent Utility that would otherwise be a Small TDU may participate as a Large TDU if

- (a) it submits a request to the Large TDUs that it be designated as a Large TDU;
- (b) the Large TDUs invite the requesting Small TDU to participate as a Large TDU;
- (c) the Small TDU accepts such invitation; and
- (d) the Large TDUs notify the Secretary of the Corporation.

1.1.24 "Large Unbundled End-Use Consumer" means an end-use consumer of electric power that

- (i) is not a Member of any of the following Member Classes: Major Transmitting Utilities; Transmission-Dependent Utilities; Generators, Power Marketers, Large Generating End-Use Consumers, and Others (except as otherwise permitted under Section 5.2.2(iii)); or State and Provincial Energy Authority/Tribes/Certain Public Interest Groups;
- (ii) individually and together with all of its Affiliates had, during the calendar year immediately preceding the relevant time, an aggregate retail electric load (not including electrical load for generator start-up or station service purposes) within the Geographic Area greater than or equal to five (5) aMW;
- (iii) does not purchase more than half of its power supply consumed within the Geographic Area solely from its legally authorized local electric or distribution utility(ies); and
- (iv) either

(a) is authorized to purchase unbundled transmission services pursuant to

(1) an unbundled retail transmission access program authorized or instituted by competent jurisdiction under applicable law, or

(2) an agreement with the retail utility that formerly provided the power supply to the End-Use Consumer; provided, however, that if there is a pending dispute concerning the authority of its local electric or distribution utility(ies) to provide local electric or distribution service to the applicant or Member or to authorize or allow unbundled retail access, then the applicant or Member shall be assigned to the Member Sub-Class (Large Bundled End-Use Consumer or Large Unbundled End-Use Consumer) designated on the application pending resolution of the dispute. Thereafter, the Secretary of the Corporation shall assign the Member to the Member Class or Member Sub-Class consistent with the resolution of the dispute concerning the authority of its local electric or distribution utility(ies) to provide local electric or distribution service by settlement of the parties or by a court with jurisdiction; provided, however, that nothing in this subsection (iv) precludes challenges on other grounds under Section 5.4.5 of these Developmental Bylaws or resulting reassignment; or

(b) is a "direct service industrial customer," which means a direct service industry to which the Bonneville Power Administration is authorized to sell power under the Pacific Northwest Electric Power Planning and Conservation Act.

1.1.25 "Major Transmitting Utility" means the following entities if they desire membership and otherwise qualify to become Members: Avista Corporation, Bonneville Power Administration, British Columbia Hydro and Power Authority, Idaho Power Company, Nevada Power Company, NorthWestern Energy, PacifiCorp, Portland General Electric, Puget Sound Energy Inc., and Sierra Pacific Power Company may become a Major Transmitting Utility. Seattle City Light may at its election enter the Major Transmitting Utility or Transmission-Dependent Utility Member Class.

1.1.26 "Market Participant" means any entity that, either directly or through an Affiliate, sells or brokers electric energy, is the owner or operator of transmission facilities, or provides transmission services within the Geographic Area.

1.1.27 "Member" means any Person that has become a Member of the Corporation under and in accordance with the provisions of Article V of these Developmental Bylaws, and that has not resigned or been terminated from membership in the Corporation.

1.1.28 "Member Class" shall have the meaning set forth in Section 5.2.1 of these Developmental Bylaws.

1.1.29 "Member Sub-Class" means a sub-class of Members in any Member Class.

1.1.30 "Members Representative Committee" or "MRC" shall mean the committee described in Sections 6.1 and 6.2 of these Developmental Bylaws.

1.1.31 "NWPCC" means the Northwest Power and Conservation Council, or any successor organization.

1.1.32 "Operational Board of Trustees" or "Operational Board" means the Board of Trustees elected pursuant to the Operational Bylaws and as described in Article VII and elsewhere in these Developmental Bylaws.

1.1.33 "Operational Bylaws" means the unadopted bylaws attached as Exhibit D.

1.1.34 "Operational Stage" means the period of time that the Operational Bylaws are in effect.

1.1.35 "Participating Jurisdiction" means any state (other than California) or province, all or any portion of which is located within the Geographic Area.

1.1.36 "Person" means an individual, corporation, cooperative corporation, municipal corporation, quasi-municipal corporation, limited liability company, mutual association, partnership, limited partnership, limited liability partnership, association, joint stock company, trust, unincorporated organization, government entity or political subdivision thereof, or organization recognized as a legal entity by law in the United States or Canada.

1.1.37 "Power Marketer" means a wholesale power marketer that is authorized by FERC to sell electric power at market-based rates and that does not own, control, or operate any electric generation, transmission, or distribution facilities.

1.1.38 "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

1.1.39 "RCW" means the Revised Code of Washington, as amended from time to time.

1.1.40 "Regional Representatives Group" means that certain regional stakeholder body, the membership of which as of the effective date of these Developmental Bylaws consists of the members and alternates identified in Exhibit C, which members and alternates may be changed from time to time as permitted by the Regional Representatives Group.

1.1.41 “Related Person” of an individual means all of the following: an individual’s spouse, domestic partner, parents (including stepparents and in-laws), children (including stepchildren and in-laws), and siblings (including stepsiblings and in-laws).

1.1.42 “Small TDU” means any Transmission-Dependent Utility that is not designated as a Large TDU pursuant to Section 1.1.23.

1.1.43 “State or Provincial Energy Authority” means

- (i) the utilities regulatory commission of each Participating Jurisdiction;
- (ii) any other state or provincial agency, ministry, or department in any Participating Jurisdiction that has siting, energy policy, or resource planning authority with regard to electrical energy, and that is designated by the governor or premier of a Participating Jurisdiction, by notice to the Secretary of the Corporation, as a Member in the State and Provincial Energy Authority Member Sub-Class, each of the foregoing subject to the limitations of Section 5.3.2; and
- (iii) the NWPCC.

1.1.44 “Transmission-Dependent Utility” means any municipality; municipal utility; public utility district; people’s utility district; cooperative corporation; joint operating agency, joint operating entity, joint powers authority, or comparable entity; irrigation district; mutual association; or tribal utility that

- (i) furnishes electric services over an electric transmission or distribution system (whether its own or its members’) located within the Geographic Area; and
- (ii) is not a Major Transmitting Utility.

1.1.45 “Transmission Agreements” means the agreements initially offered by the Developmental Board to transmission owners and operators that, when effective, will allow the Corporation to perform services to be provided by the Corporation over or with respect to those transmission owners’ or operators’ transmission facilities; provided, however, that a stand-alone agreement that provides only for the Corporation to serve as a control area operator for transmission owners and operators shall not be considered a Transmission Agreement for the purposes of Sections 13.1 and 13.2.

1.1.46 “Tribe” means a tribe or first nation recognized under applicable U.S. or Canadian federal law that has trust lands or traditional homelands with an official current address recognized by the U.S. Department of the Interior within the U.S. portion of the Geographic Area or reserve lands or lands allocated to the first nation by treaty located within the Canadian portion of the Geographic Area.

1.1.47 "Trustee" means a member of the Interim Board of Trustees, Developmental Board of Trustees, or Operational Board of Trustees, as appropriate.

## ARTICLE II

### OFFICES

The principal executive office of the Corporation shall be located at such place as the Interim or Developmental Board of Trustees may from time to time designate. Additional offices may be established and maintained at such place or places as the Interim or Developmental Board of Trustees may from time to time designate.

## ARTICLE III

### PURPOSES AND LIMITATIONS

#### 3.1 Purposes.

3.1.1 Purposes During Developmental Stage. The purposes of the Corporation during its Developmental Stage are

- (i) to develop and negotiate Transmission Agreements with transmission owners and operators within the Geographic Area and endeavor to do so within six (6) months from the date the Developmental Board of Trustees is seated;
- (ii) to develop tariff provisions describing services and related protocols for the Operational Stage of the Corporation that build upon the technical work developed by the Regional Representatives Group work groups prior to the seating of the Developmental Board;
- (iii) in that development and negotiation, to promote and foster regional stakeholder input, garner broad regional support, and consider such matters as economic efficiency and fairness, reliability, cost-effectiveness, risks and rewards, fuel diversity and sustainability, and environmental effects;
- (iv) to secure execution of Transmission Agreements by transmission owners and operators in the Geographic Area to commence the Operational Stage of the Corporation; and
- (v) to take such other actions as are necessary and appropriate to accomplish the foregoing, including addressing potential seams issues; provided, however, that the Corporation during its Developmental Stage shall be subject to the limitations set forth in Section 3.2.

3.1.2 Regional Transmission Plan and Planning. In addition, the Corporation may develop a regional transmission plan and coordinate transmission planning for Members

voluntarily participating in such planning, subject to the Members approving (by the vote provided for in Section 5.14.8) a proposal to undertake any planning activities and the Interim Board or Developmental Board securing voluntary funding for such planning efforts.

3.2 Limitations. Notwithstanding any other provision of these Developmental Bylaws, the Corporation during the Developmental Stage shall have no authority to do any of the following:

- (i) own, control, or operate any electric utility facilities subject to the jurisdiction of any state, provincial, or federal utilities regulatory commission;
- (ii) purchase, sell, transmit, or deliver, or participate in any market or transactions with respect to, electric energy or ancillary services except as it may purchase retail service for its own account and consumption;
- (iii) provide any utility service, including transmission of electricity or electricity sales or service, or control activities affecting utility service;
- (iv) make any filing (other than in response to a subpoena or to make jurisdictional challenges) with any state, provincial, or federal utilities regulatory commission; provided, however, that nothing herein shall limit any Member from making any regulatory filing;
- (v) upon election of the Developmental Board of Trustees, spend or borrow beyond the approved limits in the Funding Agreement;
- (vi) adopt the Operational Bylaws, except as provided in Section 7.2.5; or
- (vii) amend the Operational Bylaws.

## ARTICLE IV

### REGIONAL CONSULTATION

4.1 Consultation with the Regional Representatives Group. The Developmental Board of Trustees and Corporation's staff shall work with the Regional Representatives Group as provided in this Article IV for the purposes of providing information to stakeholders in the region, obtaining and considering input from stakeholders with regard to its activities pursuant to Article III, and conducting mandatory consultation under Section 4.1.4.

4.1.1 Structure and Procedures Adopted by Regional Representatives Group. The Corporation shall cooperate with the Regional Representatives Group in the implementation of the provisions of this Article IV in accordance with the organizational structure and procedures adopted by the Regional Representatives Group.

4.1.2 Regional Representatives Group Meetings. The Corporation shall schedule monthly meetings of the Regional Representatives Group for blocks of six (6) months and provide notice to the Regional Representatives Group of such schedule. The Corporation shall modify the meeting schedule as reasonably requested by an appropriate designee of the Regional Representatives Group. The Corporation shall be responsible for procuring all necessary facilities for such meetings.

4.1.3 Response to Requests for Information and Status Reports. The Corporation shall respond to reasonable requests for information from the Regional Representatives Group and provide periodic reports on the status of developmental work.

4.1.4 Required Consultation with Regional Representatives Group. The Developmental Board of Trustees shall first consult with the Regional Representatives Group in a scheduled meeting and receive its input if the Developmental Board of Trustees proposes, either separately or as part of a regional coordination body, to take any of the following actions:

- (i) offer Transmission Agreements to one or more counterparties for acceptance;
- (ii) offer a Transmission Agreement for the operation of a consolidated control area; or
- (iii) enter into agreements with other transmission providers outside the Geographic Area to coordinate any transmission services or to form programs or entities to provide services or take action on behalf of such group of providers.

4.2 Consultation with Governmental Committee. The Developmental Board of Trustees shall, in cooperation with representatives of the Participating Jurisdictions within the Geographic Area, identify or form a committee of representatives of Participating Jurisdictions and the Tribes Member Sub-Class (the "Governmental Committee") for the purpose of consulting with appropriate state and provincial regulatory and other agencies and authorities regarding the fulfillment of the Corporation's purposes during the Developmental Stage. A Participating Jurisdiction need not be a Member of the Corporation to designate representatives to participate on the Governmental Committee. A Governmental Committee representative may be

- (i) a voting Member of the State and Provincial Energy Authority Member Sub-Class or the Tribes Member Sub-Class;
- (ii) an *ex officio* Member of the State and Provincial Energy Authority Member Sub-Class; or
- (iii) a representative of a Participating Jurisdiction's electricity regulatory commission.

4.2.1 Formation of the Governmental Committee. Within thirty (30) days after the election of the Developmental Board, the Secretary of the Corporation shall give notice of the formation or recognition of the Governmental Committee to each Member that has joined the State and Provincial Energy Authority Member Sub-Class and to each Member designated by a Tribe as its representative pursuant to Section 5.3. The structure, organization, and administration of the Governmental Committee, as well as the number of representatives permitted to participate from each Participating Jurisdiction and Tribe, shall be as agreed upon by the Developmental Board of Trustees and representatives of the Participating Jurisdictions within the Geographic Area. The Secretary of the Corporation shall request that each member of the Governmental Committee promptly notify the Secretary of the Corporation of any change in the designation of a member of the Governmental Committee.

4.2.2 Meetings of the Governmental Committee. The Corporation shall schedule meetings for the Governmental Committee at least once each calendar quarter. Members of the Developmental Board of Trustees shall make best efforts to attend each of the scheduled meetings unless the Governmental Committee specifies that a meeting be held without members of the Developmental Board of Trustees in attendance.

4.3 Additional Regional Meetings. In addition to the consultation provided for in Sections 4.1 and 4.2, the Developmental Board of Trustees shall make reasonable, good-faith efforts to consult with other governmental agencies, the Regional Representatives Group, the general public, Tribes, and other interested organizations within the Geographic Area. The Developmental Board of Trustees shall make best efforts to conduct such consultation throughout the Geographic Area, and at locations other than the major urban areas in which meetings of the Developmental Board of Trustees and of the Regional Representatives Group are normally held. The Corporation shall give notice to the Regional Representatives Group, the Members, and the Governmental Committee of any scheduled meetings held to obtain consultation under this Section 4.3.

4.4 Consultation Notices. The Corporation shall give the members of the Regional Representatives Group and the Governmental Committee notice of the Board's regularly scheduled meetings and of the agenda at least seven (7) days before the meeting, and also provide notice to all Members of the Corporation as provided in these Developmental Bylaws. All notices required to be given under this Article IV shall be provided by posting on the Grid West Website, and by distributing notice electronically to all Persons entitled to receive notices under this Article IV that have provided the Secretary of the Corporation with their electronic mail address.

## ARTICLE V

### MEMBERS

5.1 Powers and Rights of Members. The Members shall, subject to these Developmental Bylaws and applicable law, have the rights and powers listed in Sections 5.1.1 through 5.1.3:

5.1.1 Exclusive Member Rights. The Members shall have the exclusive right and power to

- (i) nominate and elect members of the MRC pursuant to Section 6.3;
- (ii) remove members of the MRC without cause pursuant to Section 6.6;
- (iii) approve amendments of these Developmental Bylaws proposed by the Developmental Board of Trustees pursuant to Section 7.2.6 (subject to the applicable provisions of Sections 5.13 and 5.14);
- (iv) override a proposal by the Developmental Board of Trustees to dissolve the Corporation as provided in Article XIII (subject to the applicable provisions of Sections 5.13 and 5.14);
- (v) approve a proposal by the Developmental Board of Trustees to adopt the Operational Bylaws;
- (vi) approve a proposal by the Interim or Developmental Board of Trustees to develop a regional transmission plan or coordinate transmission planning consistent with Section 3.1.2; and
- (vii) participate in advisory votes submitted to the Members by the Interim or Developmental Board of Trustees pursuant to Section 5.15.

5.1.2 Nonexclusive Member Rights and Powers. The Members shall have the nonexclusive right and power to

- (i) remove members of the MRC for cause pursuant to Section 6.6, and
- (ii) amend the Articles of Incorporation pursuant to the provisions therein.

5.1.3 Additional Member Rights. The Members shall have the nonexclusive right to receive notices of and attend and be heard at meetings of the Members and the Interim and Developmental Boards of Trustees as provided in these Developmental Bylaws, and to provide guidance to the Board of Trustees through advisory votes requested by the Board of Trustees, by resolutions, and by other means as determined by the Members.

## 5.2 Classes of Members.

5.2.1 Identification of Member Classes. The Corporation shall have five (5) classes of Members (each such class, a "Member Class") with the voting rights as set forth in these Developmental Bylaws:

- (i) the Major Transmitting Utilities Member Class;
- (ii) the Transmission-Dependent Utilities Member Class, with the following Member Sub-Classes:
  - (a) Large TDU Member Sub-Class, and
  - (b) Small TDU Member Sub-Class;
- (iii) the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, with the following Member Sub-Classes:
  - (a) Generators Member Sub-Class,
  - (b) Power Marketers and Others Member Sub-Class, and
  - (c) Large Generating End-Use Consumers Member Sub-Class;
- (iv) the End-Use Consumers Member Class, with the following Member Sub-Classes:
  - (a) Large Unbundled End-Use Consumers Member Sub-Class,
  - (b) Large Bundled End-Use Consumers Member Sub-Class,and
  - (c) Consumer Advocates Member Sub-Class; and
- (v) the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class, with the following Member Sub-Classes:
  - (a) State and Provincial Energy Authority Member Sub-Class,
  - (b) Tribes Member Sub-Class, and
  - (c) Certain Public Interest Groups Member Sub-Class.

5.2.2 Member Class Assignment Rules. Subject to the following limitations, any Person that has been determined, in accordance with the provisions of Section 5.3, to be qualified to become a Member shall be entitled to be a Member of the Member Class for which it qualifies. No Member may be a Member of more than one (1) Member Class or Member Sub-Class at any given time, and no Person may be a Member if an Affiliate of such Person is already a Member. Unless provided otherwise below, a Person that qualifies to be a Member shall be assigned to a Member Class or Member Sub-Class according to the following provisions;

provided, however, that a Tribe may elect among any of the Member Classes or Member Sub-Classes for which it qualifies.

(i) If an applicant or Member qualifies for both the Major Transmitting Utilities Member Class and any other Member Class, it shall be a Member of the Major Transmitting Utilities Member Class, except as set forth in the definition of Major Transmitting Utility.

(ii) If an applicant or Member qualifies for both the Transmission-Dependent Utilities Member Class and any Member Class other than the Major Transmitting Utilities Member Class, it shall be a Member of the Transmission-Dependent Utilities Member Class.

(iii) If an applicant or Member qualifies for both the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class and the End-Use Consumers Member Class, the following rules shall apply:

(a) If the applicant or Member qualifies as a Large Generating End-Use Consumer, it shall be entitled to be a Member of either the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class or the End-Use Consumers Member Class; provided, however, that once having elected membership in either of such Member Classes, the Member shall not (unless such Member no longer qualifies for the class in which it has elected membership) be entitled, for a period of three (3) years thereafter, to change its membership to the other such class.

(b) If the applicant or Member is not a Large Generating End-Use Consumer, but owns or operates in the Geographic Area one (1) or more generating facilities located in proximity to, and electrically interconnected with, one (1) or more of such applicant's or Member's manufacturing or other industrial production facilities at which electric power is consumed on an end-use basis, then such applicant or Member shall be a Member of the End-Use Consumers Member Class.

(c) In all other instances, if an applicant or Member qualifies for both the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class and the End-Use Consumers Member Class, the applicant or Member shall be a Member of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class.

(iv) If an applicant or Member qualifies for the End-Use Consumers Member Class, and only that Member Class, then it shall be a Member of the End-Use Consumers Member Class.

(v) If an applicant or Member qualifies for the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class, and only that

Member Class, it shall be a Member of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class, except that a Tribe may elect to be a Member of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class even if it qualifies for another class.

(vi) If an applicant or Member qualifies for the State and Provincial Energy Authority Member Sub-Class and the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, then it shall be a Member of the State and Provincial Energy Authority Member Sub-Class.

### 5.3 Qualifications and Admission of Members.

5.3.1 General Qualifications for Membership. No Person may become or be a Member unless

(i) such Person is a Major Transmitting Utility; a Transmission-Dependent Utility; an entity within the definition of "Generators, Power Marketers, Large Generating End-Use Consumers, and Others"; an End-Use Consumer; a State or Provincial Energy Authority; a Tribe; or a Certain Public Interest Group; and

(ii) such Person has timely paid the requisite initial and subsequent annual membership fees of \$1,000 each year; provided, however, that such fees shall be waived for State or Provincial Energy Authorities, and one (1) Consumer Advocate in each Participating Jurisdiction; and, provided, further, that upon their written request, the Membership Admissions Committee (as defined in Section 5.4.1) or Developmental Board of Trustees may waive or reduce such fees on a nondiscriminatory basis for Tribes or Certain Public Interest Groups that are applying for membership in the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class.

5.3.2 Voting and Ex Officio Members from States and Provinces. Any State or Provincial Energy Authority shall be admitted to membership, as a voting or *ex officio* (nonvoting) Member, upon giving notice to the Secretary of the Corporation of its intent to become a Member and whether it desires to be a voting or *ex officio* Member, together with the name, address, telephone number, facsimile number, and electronic mail address of the State or Provincial Energy Authority; the name of the State or Provincial Energy Authority chairperson or director or other individual who is authorized to send and receive notices on behalf of, and otherwise represent, such State or Provincial Energy Authority in all matters relating to its membership in the Corporation; and the name of an alternate for such individual; provided, however, that no more than two (2) State or Provincial Energy Authorities from any given Participating Jurisdiction (without counting the NWPCC for this purpose) may be Members (whether voting or *ex officio*) at the same time; and, provided, further, that the NWPCC shall be entitled to only one (1) membership in the State and Provincial Energy Authority Member Sub-Class (not one (1) membership per state).

5.3.3 Membership of Tribes. Any Tribe shall be admitted to membership upon payment of the membership fee and giving notice to the Secretary of the Corporation of its intent

to become a Member, together with the name, address, telephone number, facsimile number, and electronic mail address of the Tribe; the name of the tribal chairperson or director or other individual who is authorized to send and receive notices on behalf of, and otherwise represent, such Tribe in all matters relating to its membership in the Corporation; and the name of an alternate for such individual; provided, however, that no Tribe may hold more than a single Member position in the Corporation at any time; and, provided, further, that if a Tribe requests a waiver of the membership fee, the Tribe shall not become a Member until the waiver has been granted and all other requirements set forth above are satisfied.

5.3.4 Procedures for Application. The application of any Person that believes that it satisfies the membership requirements set forth in Sections 5.3.1 through 5.3.3 and that desires to become a Member shall be processed following the procedures set out in Section 5.4 (Interim Board) or Section 5.5 (Developmental Board).

5.3.5 Notice of Acceptance of Membership. Upon acceptance of the membership application of any entity to be a Member in any Member Class, the Secretary of the Corporation shall provide notice of such acceptance to each existing Member.

5.3.6 Certain Limitations on Membership. No Affiliate of any Person that is a Member may be a Member at any time while such Person is a Member. A Person that is a Member and has as its members other Persons that are Members, such as a joint operating agency, a joint operating entity, or a generation and transmission cooperative, may not be in the same Member Sub-Class as any of its members.

5.3.7 List of Members. The Corporation shall maintain at all times a current list of the name and address of each Member, along with the name of the designated representative and alternate representative of each such Member, and Member Class assignment. The list shall be posted on the Grid West Website and updated periodically.

5.3.8 Member's Right to Replace Authorized Representative. Any Member may at any time, effective upon notice to the Secretary of the Corporation, replace the individual who is authorized to represent such entity and to whom notices shall be sent, or the alternate for such individual.

5.3.9 Member Obligation to Report Changes in Qualification; Disqualification and Redesignation of Member Class. Each Member has a continuing obligation to notify the Secretary of the Corporation of any material change in circumstances that would disqualify it from membership or require a redesignation of Member Class or Member Sub-Class. The Secretary of the Corporation shall establish procedures for review and determination of a Member's status and redesignation of Member Class or Member Sub-Class, where a Member fails to qualify for a Member Class or Member Sub-Class, or, if the Member no longer qualifies for any Member Class or Member Sub-Class, termination of Membership.

5.4 Admission by Interim Board.

5.4.1 Membership Admissions Committee. The members of the Membership Admissions Committee are Stefan Brown, Robert Kahn, Carol Opatrny, Aleka Scott, and Linc Wolverton. The Membership Admissions Committee shall administer the membership application process and make determinations of Member and Member Class eligibility prior to election of the Developmental Board of Trustees. Vacancies on the Membership Admissions Committee shall be filled by majority vote of the remaining committee members. If a vacancy is not filled within two (2) weeks of the vacancy occurring, the Interim Board shall select a replacement.

5.4.2 Membership Dispute Resolution Committee. The members of the Membership Dispute Resolution Committee are Don Brookhyser, Malcolm McLellan, and Susan Ackerman. The Membership Dispute Resolution Committee shall make factual findings with respect to disputed membership applications during the Developmental Stage. Vacancies on the Membership Dispute Resolution Committee shall be filled by majority vote of the remaining committee members if the MRC has not yet been elected and by a majority vote of the MRC thereafter.

5.4.3 Initial Membership Application Window.

(i) Applications for membership in the Corporation may be submitted until close of business on the date that the Interim Board announces as the closing date of such period, which shall be no earlier than sixty (60) days after the adoption of these Developmental Bylaws.

(ii) During such application period, the Membership Admissions Committee shall receive applications for membership in the Corporation and shall, no later than fourteen (14) days after the closing of the initial application period, accept all qualified applications and make determinations of the Member Class to which each applicant shall be assigned. In addition to notifying the applicant, the Membership Admissions Committee shall post such determinations on the Grid West Website no later than the fourteenth (14th) day after the closing of the application period. The Membership Dispute Resolution Committee shall meet once before the thirtieth (30th) day of the initial membership window and again before the forty-fifth (45th) day of the initial membership window if there are challenges to applications for membership for which timely replies have been received or the time for replies set in Section 5.4.5(i) has expired.

(iii) Applications shall contain the information specified in Section 5.3.2, 5.3.3, or 5.5.1 as appropriate.

(iv) The Membership Admissions Committee may request information from any applicant to assist in a determination of Member Class. If an applicant does not respond to reasonable requests of the Membership Admissions Committee, the application may be rejected as unqualified.

5.4.4 Declaratory Membership Option During Initial Membership Application Window. In addition to an application for membership made during the initial application window, the Membership Admission Committee shall provide for a declaratory form of application (“declaratory member”) by which a Person may obtain a determination of whether it qualifies for membership in a specific Member Class prior to tendering the required membership fee. The Secretary of the Corporation shall include any such declaration in the membership posting pursuant to Section 5.4.3(ii). A declaratory member may activate membership by

(i) notifying the Secretary of the Corporation of its intent to become a Member in the Member Class or Member Sub-Class assigned through the declaratory process; and

(ii) submitting the membership fee or upon approval of any permitted application for waiver of the fee.

5.4.5 Challenges to Applications.

(i) Any applicant may protest the rejection or class assignment of its own application and any Member may protest the acceptance of the application or class assignment of any such Member or declaratory member within a ten- (10-) day period following the posting of the initial class membership and assignment by submitting its protest in writing to the Membership Admissions Committee. The Membership Admissions Committee shall post all such protests and notify by first-class mail (with a copy by electronic mail to any Member that has provided notice to the Secretary of the Corporation of such Member’s electronic mail address) the Members whose qualifications or classifications have been challenged. Each Member whose qualification or classification has been challenged shall have the opportunity to respond to the protest by written submittal to the Membership Admissions Committee to be filed on or prior to the twentieth (20th) day following the posting of the initial class membership and sub-class assignment by the Membership Admission Committee.

(ii) The Membership Dispute Resolution Committee shall consider all protests to the membership qualifications or class assignments and shall make determinations for all applicants under protest on or prior to the thirtieth (30th) day following the posting. Such determinations shall be in writing, shall specify the reasons for accepting or denying a protest, and shall be posted on the Grid West Website.

(iii) Thereafter, any Member dissatisfied with its Member Class assignment shall have the right to withdraw its membership within thirty (30) days and receive a refund of its annual dues. Otherwise, all Member Class assignments of the initial membership applicants shall be considered final, subject to the Membership Dispute Resolution Committee’s power to redesignate a Member to a different Member Class pursuant to Section 5.6.

5.4.6 Second Application Window Before Election of Developmental Board.

Applications for membership may be submitted to the Membership Admissions Committee after the notice provided in Section 7.1.13(iii)(c). The Membership Admissions Committee shall make a good-faith effort to determine each applicant's membership qualification and its appropriate Member Class by the deadline for such determinations set forth in Section 5.4.7 and shall post such determinations on the Grid West Website. In the event that the Membership Admissions Committee does not process an application before the record date established by Section 5.4.7, the application shall be referred to and processed by the Developmental Board pursuant to Section 5.5.1. An applicant may challenge the rejection or Member Class assignment of its own application pursuant to the procedures of Section 5.5.1. In addition, any Member may dispute the acceptance of the application or Member Class assignment of the applicant pursuant to the procedures set forth in Section 5.5.2, and the Secretary of the Corporation shall provide to the applicant written notice by first-class mail (with a copy by electronic mail to any Member that has provided notice to the Secretary of the Corporation of such Member's electronic mail address) of any other Member's challenge to its acceptance or class designation. A Person for whom a declaratory determination has been issued by the Membership Admissions Committee as to the Person's appropriate Member Class shall have the right to become a Member of that Member Class by tendering its membership fee unless the Membership Admissions Committee determines that the Person no longer qualifies for such Member Class based on events occurring after the issuance of the determination.

5.4.7 Recognition of Representatives Authorized to Vote. In order that the Corporation may determine the Members entitled to vote in the initial election of the MRC, any Person that is specified on the membership list maintained by the Membership Admissions Committee at the close of business of the seventh (7th) day prior to the Members meeting to elect the initial MRC and continues to be a Member at the time of that Members meeting is entitled to have its designated representative or alternate vote at the Members meeting. Persons that have not been designated into a Member Class by such date shall not be Members for the vote. No later than the close of business on the sixth (6th) day prior to the Members meeting, the Membership Admissions Committee shall provide to all Members a copy of the membership list of each Member Class. The list may be provided by electronic communication.

5.5 Admission by Developmental Board.

5.5.1 Applications After Election of Developmental Board. After the election of the Developmental Board, the Corporation shall receive new Member applications. The membership application of any Person shall specify the name, address, telephone number, facsimile number, and electronic mail address of the requesting Person; the Member Class in which such Person desires to participate; a statement of the qualifications of such Person for membership in such Member Class; the name of the individual who is authorized to represent such Person in all matters relating to its membership in the Corporation (including quorum counts, voting, and sending and receiving notices on behalf of such entity); and the name of an alternate for such individual. If the Secretary of the Corporation has any reason to believe that any particular application for membership is deficient, the Secretary of the Corporation may reject the application. If the Secretary of the Corporation has any reason to believe that any particular application for membership is not qualified to participate in the Member Class

specified in the written notice from such applicant, but is qualified to participate in another Member Class, the Secretary of the Corporation shall, within thirty (30) days after receipt of such applicant's completed membership application, so notify the applicant by first-class mail (with a copy by electronic mail to the applicant if the applicant has provided notice to the Secretary of the Corporation of its electronic mail address). In the event that the applicant does not object within fifteen (15) days to the redesignation of membership proposed by the Secretary of the Corporation, the membership application shall be redesignated for and accepted in such other Member Class. In the event that the applicant does object to such redesignation within such fifteen- (15-) day period, the dispute shall be submitted to and finally resolved by the Membership Dispute Resolution Committee. If the Secretary of the Corporation has reason to believe that any particular applicant is not qualified to participate in any Member Class, the Secretary of the Corporation shall, within thirty (30) days after receipt of such applicant's completed membership application, forward such application to the Developmental Board of Trustees, which shall approve or reject such application. If the Developmental Board of Trustees rejects the membership application of any such entity, it shall send written notice to such applicant by first-class mail (with a copy by electronic mail to the applicant if the applicant has provided notice to the Secretary of the Corporation of its electronic mail address), specifying the reasons for such rejection. If the applicant objects to such rejection, the dispute shall be submitted to and finally resolved by the Membership Dispute Resolution Committee.

5.5.2 Notice and Opportunity to Challenge. After providing notice of acceptance of a Member and initial assignment to a Member Class or Member Sub-Class to each existing Member by posting on the Grid West Website, each existing Member may, at any time thereafter, challenge the admission of such entity to membership in the Corporation or in its designated Member Class. The Secretary of the Corporation shall send notice of any such challenge to the Member by first-class mail (with a copy by electronic mail to the Member if the Member has provided notice to the Secretary of the Corporation of its electronic mail address). Each Member whose admission in the Corporation or in such Member Class has been challenged shall have the opportunity to respond to the challenge by written submittal to the Developmental Board to be filed on or prior to the twentieth (20th) day following such notice from the Secretary of the Corporation. Any such challenge shall be submitted by the Developmental Board to the Membership Dispute Resolution Committee for a final determination.

5.6 Challenges to Membership or Member Class Qualifications. Pending resolution by the Membership Dispute Resolution Committee of any challenge to a Member's membership in the Corporation or in its designated Member Class or Member Sub-Class, such Member shall be and remain a Member in its designated Member Class or Member Sub-Class and shall possess and be entitled to exercise each and all of the rights and privileges of membership in the Corporation in such Member Class or Member Sub-Class. The final determination of such challenge shall not void the election of any members of the MRC, any decision of the MRC, any decision of the Developmental Board, or any decision of the Members made before such final determination involving the challenged Member acting in its designated Member Class or Member Sub-Class. In the event that the challenged Member is determined in such dispute resolution proceeding not to satisfy the qualifications for membership in the Corporation, the membership of such Member and all of such Member's voting rights and other rights of membership shall be terminated effective immediately upon such determination. In the event

that the challenged Member is determined in such dispute resolution proceeding not to satisfy the qualifications for membership in the Member Class of which it is then a Member, but instead to satisfy the qualifications for membership in another Member Class or Member Sub-Class, such Member shall be reclassified into such other Member Class or Member Sub-Class effective immediately upon such determination.

5.7 Termination of or Withdrawal from Membership.

5.7.1 Termination for Failure to Pay Membership Fees. If any Member fails to timely pay the annual membership fee due from such Member for any year pursuant to the provisions of Section 5.3.1, the Secretary of the Corporation shall notify such Member by first-class mail, addressed to the Member at the address provided to the Secretary of the Corporation in accordance with the requirements of these Developmental Bylaws, that the Corporation has not received such membership fee and that such Member's membership in the Corporation shall be terminated in the event such fee is not paid by such Member in full within forty-five (45) days after the date of deposit of such notice in the U.S. mail. In the event that payment of the full amount of the membership fee is not received within such period, the membership of such Member in the Corporation shall be terminated immediately and without any further action upon the expiration of such forty-five- (45-) day period, and the terminated Member shall cease to have any rights whatsoever as a Member of the Corporation. Notwithstanding any such termination of membership, all dispute resolution proceedings and appeals that are in effect or pending as of such termination shall remain in effect and shall be followed to completion by the terminated Member and by other affected Members pursuant to these Developmental Bylaws. Any Member that has been terminated from membership in the Corporation may not reapply for membership for a period of one (1) year from the date of such termination.

5.7.2 Withdrawal from Membership. Any Member may withdraw from the Corporation upon providing written notice of its withdrawal to the Secretary of the Corporation. The withdrawal shall be effective upon its receipt by the Secretary of the Corporation. Notwithstanding such notice of withdrawal, all dispute resolution proceedings and appeals that are in effect or pending as of the date of the receipt by the Interim or Developmental Board of written notice of such withdrawal shall remain in effect and be followed to completion by the withdrawing Member and by other affected Members pursuant to these Developmental Bylaws. Any Member that has voluntarily withdrawn from the Corporation may not reapply for membership for a period of six (6) months from the date of its withdrawal.

5.8 Establishment of Record Date for Member Votes. In order that the Corporation may determine the Members entitled to vote in any election of members of the MRC or on any other matter on which the Members are entitled to vote, the Interim or Developmental Board of Trustees shall set the record date, which shall be the date of notice to the Members of any meeting at which any matter is to be presented to the Members for a vote; provided, however, that the record date for the initial election of the MRC shall be established pursuant to Section 5.4.7. Members specified on the list maintained by the Secretary of the Corporation on the record date are entitled to notice of such meeting and to vote at any such meeting if they continue to be Members as of the date of the meeting and their designated representative or alternate is present. If the Interim or Developmental Board of Trustees calls a meeting of one

(1) or more Member Classes or Sub-Classes (but fewer than all Member Classes), the Interim or Developmental Board of Trustees shall specify the record date applicable to the meeting according to the procedures and timing the Interim or Developmental Board of Trustees determines to be fair and reasonable in the applicable circumstances.

5.9 Meetings of Members.

5.9.1 Biannual Member Meetings. After the election of the Developmental Board of Trustees, there shall be biannual meetings of the Members of the Corporation at approximately six- (6-) month intervals at such date, time, and place within the Geographic Area as the Developmental Board of Trustees shall determine. At one (1) such biannual meeting, the members of the Developmental Board of Trustees and officers of the Corporation shall

(i) deliver to the Members (to the extent not delivered previously) the annual financial statements of the Corporation prepared in accordance with the requirements of Section 10.2 and copies of the Corporation's budgets for at least the current and next fiscal years;

(ii) discuss other significant matters affecting the Corporation;

(iii) describe the Corporation's progress on carrying out the purposes in Article III; and

(iv) respond to any questions of the Members with respect thereto.

5.9.2 Special Member Meetings. In addition to the meetings of the Members required under Section 5.9.1,

(i) special meetings of the Members for any purpose or purposes may be called at any time by

(a) the President of the Corporation,

(b) the Developmental Board of Trustees,

(c) not less than one-third (1/3) of the Members entitled to vote at such meeting, or

(d) not less than a majority of the Members in any two (2) Member Classes; and

(ii) special meetings of the Members in any Member Class or Member Sub-Class for any purpose or purposes may be called at any time by

(a) the President of the Corporation,

- (b) the Developmental Board of Trustees, or
- (c) not less than one-third (1/3) of the Members entitled to vote at such meeting.

Any such special meetings shall be held at such date, time, and place within the Geographic Area as may be determined by the person or persons calling such meeting.

5.10 Notice of Meetings of Members.

5.10.1 Timing and Manner of Notices. Notice of regularly scheduled and special meetings shall be given to each Member entitled to vote at such meeting not less than ten (10) days and not more than fifty (50) days prior to the meeting; or not less than thirty (30) days and not more than fifty (50) days prior to the meeting in the case of any meeting

- (i) to vote on the election of one (1) or more members of the MRC;
- (ii) to vote on any proposed amendment to these Developmental Bylaws; or
- (iii) to vote on dissolution of the Corporation.

Notice shall be made either personally or by first-class mail, with a copy by electronic mail to any such Member that has provided notice to the Secretary of the Corporation of such Member's electronic mail address. If mailed, such notice shall be deemed given when deposited in the U.S. or Canadian mail, with first-class postage thereon prepaid, addressed to the Member at the address provided to the Secretary of the Corporation in accordance with the requirements of these Developmental Bylaws. Each such notice shall state the date, time, and place of the meeting and the meeting agenda, including the purpose or purposes for which the meeting is called.

5.10.2 Effect of Lack of Notice and Agenda Changes. At the biannual meetings of the Members of the Corporation, the failure of any item to be included in the notice or on the agenda shall not prevent action from being taken at the meetings; provided, however, that if any changes are made to any such agenda before the meeting, the Secretary of the Corporation shall make reasonable efforts to provide the Members of the Corporation of any such changes as soon as practicable in advance of the meeting. At any other meeting of the Members, the failure of any item to be included in the notice or on the agenda shall prevent action on that item from being taken at the meeting.

5.10.3 Public Notice of Member Meetings. Public notice of each meeting of the Members, and each meeting of any two (2) or more Member Classes, shall be placed on the Grid West Website and posted at the offices of the Corporation at least ten (10) days before such meeting. Public notice of any adjournment and reconvening of any such meeting shall be placed on the Grid West Website and posted at the offices of the Corporation as soon as practicable after any such adjournment. Each such notice shall include an agenda for the meeting. If any

changes are made to any such agenda before the meeting to which the agenda relates, the Secretary of the Corporation shall make reasonable efforts to provide public notice of any such changes as soon as practicable in advance of the meeting. In addition, notice of each meeting of the Members, and each meeting of any two (2) or more Member Classes, shall be sent by the Secretary of the Corporation, by first-class mail, telegram (charges prepaid), facsimile, or electronic mail, to each member of the public who so requests and who has provided such Secretary of the Corporation with complete information regarding such person's name and address; provided, however, that the failure of any such member of the public to receive notice of any meeting of the Members shall not under any circumstances affect the validity of such meeting or any action taken at such meeting.

5.11 Open Member Meetings. Except as hereinafter set forth, any member of the public may attend and observe the proceedings of any meeting of the Members, and any meeting of any two (2) or more Member Classes, noticed pursuant to Section 5.10.3. Notwithstanding the foregoing, Members may, with notice to the Secretary of the Corporation in each instance, hold any such meeting in closed session for the same purposes and to the same extent as the Developmental Board of Trustees is entitled to hold closed sessions pursuant to Section 7.6.

5.12 Member Waivers of Notice. The notice requirements contained in these Developmental Bylaws may be waived in writing by any Member with respect to itself, either before or after the meeting. The attendance by any Member at a meeting without protesting, as soon as reasonably practicable, the lack of notice of such meeting shall constitute a waiver of notice by it. All waivers shall be made part of the minutes of the meetings.

5.13 Quorum Rules. There is no quorum requirement for regularly scheduled or special Member meetings; provided, however, that the Secretary of the Corporation shall count only the votes cast in Member Classes or Member Sub-Classes that meet their respective quorum rules for voting.

5.13.1 Quorum Rules for Binding Member Votes (Except to Fill Members Representative Committee Vacancies and to Remove Members Representative Committee Members).

(i) Except for meetings of a Member Class or Member Sub-Class to fill vacancies of its designated MRC positions (or to remove a member of the MRC) for which the quorum rule is set forth in Section 5.13.2, all votes of Members must take place at a duly called meeting of Members (all Member Classes meeting at the same time).

(ii) If a Member Class does not include any Member Sub-Classes, then the quorum requirement for that Member Class at any Member meeting shall be one-third (1/3) of the Members belonging to that Member Class and entitled to vote.

(iii) If a Member Class has Member Sub-Classes, then quorum requirements shall apply to each Member Sub-Class separately, and the quorum

requirement for a Member Sub-Class at any Member meeting shall be one-third (1/3) of the Members belonging to that Member Sub-Class.

(iv) The validity of a quorum for any Member Class that satisfies the requirement set forth in Section 5.13.1(ii) shall not be affected by the failure of any other Member Class to satisfy the applicable Member Class quorum requirement. The validity of a quorum for any Member Sub-Class that satisfies the requirement set forth in Section 5.13.1(iii) shall not be affected by the failure of any other Member Sub-Class within its Member Class (or the failure of any other Member Class) to satisfy the applicable quorum requirement.

(v) The manner of tabulating Member votes at any meeting at which the Members have satisfied the foregoing requirements shall be as specified in Section 5.14.

(vi) In any Member Class or Member Sub-Class that has *ex officio* Members, the *ex officio* Members do not count when determining whether a quorum exists.

5.13.2 Quorum Rules for Meetings of Member Classes or Member Sub-Classes to Remove Members of the Members Representative Committee and to Fill Vacancies.

(i) If a Member Class or Member Sub-Class wishes to remove a member of the MRC or if a vacancy occurs with respect to any MRC positions for which a particular Member Class or Member Sub-Class is entitled to vote (other than due to the ordinary expiration of the MRC members' terms), the applicable Member Class or Member Sub-Class may request that the Developmental Board of Trustees convene a special meeting of the affected Member Class or Member Sub-Class (without the need for other Member Classes or Member Sub-Classes to meet at the same time) to remove the member or fill the vacancy in accordance with Section 6.6.

(ii) If a Member Class does not include any Member Sub-Classes, then the quorum requirement for that Member Class at any Member meeting shall be one-third (1/3) of the Members belonging to that Member Class and entitled to vote.

(iii) If a Member Class has Member Sub-Classes, then quorum requirements shall apply to each Member Sub-Class separately, and the quorum requirement for a Member Sub-Class at any Member meeting shall be one-third (1/3) of the Members belonging to that Member Sub-Class.

(iv) The validity of a quorum for any Member Class that satisfies the requirement set forth in Section 5.13.2(ii) shall not be affected by the failure of any other Member Class to satisfy the applicable Member Class quorum requirement. The validity of a quorum for any Member Sub-Class that satisfies the requirement set forth in Section 5.13.2(iii) shall not be affected by the failure of any other Member Sub-Class

within its Member Class (or the failure of any other Member Class) to satisfy the applicable quorum requirement.

(v) The manner of tabulating Member votes with respect to Member Class or Member Sub-Class meetings to fill MRC vacancies shall be as set forth in the applicable provisions of Section 6.3, and the manner of tabulating Member votes with respect to meetings to remove MRC members shall be as set forth in the applicable provisions of Section 6.6.

(vi) In any Member Class or Member Sub-Class that has *ex officio* Members, the *ex officio* Members do not count when determining whether a quorum exists.

5.13.3 Quorum Rules for Member Advisory Votes. The quorum rules applicable to Member advisory votes called by the Interim or Developmental Board of Trustees (as authorized in Section 5.15) shall be as specified by the Interim or Developmental Board of Trustees with respect to the matter being submitted to an advisory vote. If the Interim or Developmental Board of Trustees does not specify special quorum rules, the quorum rules shall be as set forth in Section 5.13.1.

#### 5.14 Voting of Members (Other Than Advisory Votes).

5.14.1 General Voting Rules. For any Member Class or Member Sub-Class that has met the quorum requirements at a duly called meeting of Members (except for electing MRC members or filling MRC vacancies, which shall be as specified in the applicable provisions of Section 6.3), the voting rules shall be as follows:

(i) Each Member Class (other than the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class), as a whole, shall have total voting power equal to six (6) votes. The State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class, as a whole, shall have total voting power equal to six (6) votes if the State and Provincial Energy Authority Member Sub-Class has four (4) or fewer voting Members, or seven (7) votes if the State and Provincial Energy Authority Member Sub-Class has five (5) or more voting Members. The combined voting power of all Member Classes in the Corporation equals thirty (30) votes, except if the State and Provincial Energy Authority Member Sub-Class has five (5) or more voting Members, in which case the combined voting power of all Member Classes in the Corporation equals thirty-one (31) votes. Tabulation of Member votes shall be as set forth in this Section 5.14.

(ii) A Member shall participate and vote in a Member meeting or Member Class or Member Sub-Class meeting through the designated representative or alternate appearing on the records of the Secretary of the Corporation. The Members' designated representative or alternate shall be required to be present in person at a meeting in order to vote on any matter coming before the Members at such meeting. A designated representative or alternate may represent more than one (1) Member in the

Transmission-Dependent Utilities Member Class (even if the Members are in different Member Sub-Classes). A designated representative or alternate may represent more than one (1) Member in the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class (even if the Members are in different Member Sub-Classes). For other Member Classes, a designated representative or alternate may represent more than one (1) Member only in the same Member Sub-Class (or, if a Member Class has no Member Sub-Classes, in the same Member Class) except in a Member Class in which a majority of the voting power within each of the Member Sub-Classes has voted to allow a designated representative or alternate to represent Members in multiple Member Sub-Classes within the Member Class. The designated representative or alternate shall be allowed to vote separately for each Member for which he or she is the designated representative or alternate. Each Member warrants to the Corporation and to the other Members that its designated representative and alternate have the authority to act on behalf of the Member and are authorized to participate in debate and consider input from others before taking a position or voting on behalf of the Member.

(iii) The allocation of voting power to Member Classes, and where applicable to Member Sub-Classes within each of the Member Classes, shall be as set forth in Section 5.14.3.

5.14.2 Membership Thresholds. If a Member Sub-Class has a number of Members equal to or greater than the thresholds set forth in this Section 5.14.2, then voting power shall be allocated to the Member Sub-Class as set forth in Section 5.14.3. If a Member Class or Member Sub-Class with no threshold has at least one (1) Member, then voting power shall be allocated to the Member Class or Member Sub-Class as set forth in Section 5.14.3. *Ex officio* Members that join pursuant to Section 5.3.2 do not count for threshold determinations. If a Member Sub-Class has zero (0) Members or a number of Members less than the thresholds set forth in this Section 5.14.2, then voting power shall be reduced and reallocated as set forth in Section 5.14.4. If a Member Class or Member Sub-Class with no threshold has zero (0) Members, then voting power shall be reduced and reallocated as set forth in Section 5.14.4.

(i) Major Transmitting Utilities Member Class. There is no threshold for this Member Class.

(ii) Transmission-Dependent Utilities Member Class. There is no threshold for this Member Class or its Member Sub-Classes.

(iii) Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class.

(a) Generators Member Sub-Class: There is no threshold for this Member Sub-Class.

(b) Large Generating End-Use Consumers Member Sub-Class: The threshold for this Member Sub-Class is five (5) Members.

(c) Power Marketers and Others Member Sub-Class: The threshold for this Member Sub-Class is ten (10) Members.

(iv) End-Use Consumers Member Class.

(a) Large Unbundled End-Use Consumers Member Sub-Class: The threshold for this Member Sub-Class is two (2) Members.

(b) Large Bundled End-Use Consumers Member Sub-Class: The threshold for this Member Sub-Class is one (1) Member.

(c) Consumer Advocates Member Sub-Class: The threshold for this Member Sub-Class is three (3) Members.

(v) State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class.

(a) State and Provincial Energy Authority Member Sub-Class: The threshold for this Member Sub-Class is four (4) Members. *Ex officio* Members do not count toward achievement of the threshold. Even though the threshold for the State and Provincial Authority Member Sub-Class is four (4), the voting power for that Member Sub-Class is five (5) pursuant to Section 5.14.1(i) if there are five (5) or more voting Members in the Member Sub-Class.

(b) Tribes Member Sub-Class: The threshold for this Member Sub-Class is one (1) Member.

(c) Certain Public Interest Groups Member Sub-Class: The threshold for this Member Sub-Class is one (1) Member.

5.14.3 Initial Allocation of Voting Power.

(i) Major Transmitting Utilities: The voting power of the Major Transmitting Utilities Member Class shall be allocated equally among all of those Members that are signatories (or the operator of the assets is a signatory) to the Funding Agreement; provided, however, that the voting power of the Major Transmitting Utilities Member Class shall be allocated equally among all of those Members (without regard to signing the Funding Agreement) for the vote conducted pursuant to Section 12.2.

(ii) Transmission-Dependent Utilities: The voting power of the Transmission-Dependent Utility Member Class shall be allocated as follows:

(a) three (3) of the six (6) votes' worth of voting power held by the Transmission-Dependent Utilities Member Class shall be held by the Large TDU Member Sub-Class; and

(b) three (3) of the six (6) votes' worth of voting power held by the Transmission-Dependent Utilities Member Class shall be held by the Small TDU Member Sub-Class.

(iii) Generators, Power Marketers, Large Generating End-Use Consumers, and Others: The voting power of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class shall be allocated as follows:

(a) four (4) of the six (6) votes' worth of voting power held by the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class shall be held by the Generators Member Sub-Class;

(b) one (1) of the six (6) votes' worth of voting power held by the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class shall be held by the Large Generating End-Use Consumers Member Sub-Class; and

(c) one (1) of the six (6) votes' worth of voting power held by the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class shall be held by the Power Marketers and Others Member Sub-Class, composed of all Members of the Member Class that are not either Generators or Large Generating End-Use Consumers.

(iv) End-Use Consumers: The voting power of the End-Use Consumers Member Class shall be allocated as follows:

(a) two (2) of the six (6) votes' worth of voting power held by the End-Use Consumers Member Class shall be held by the Members of the Large Unbundled End-Use Consumers Member Sub-Class;

(b) one (1) of the six (6) votes' worth of voting power held by the End-Use Consumers Member Class shall be held by the Members of the Large Bundled End-Use Consumers Member Sub-Class; and

(c) three (3) of the six (6) votes' worth of voting power held by the End-Use Consumers Member Class shall be held by the Members of the Consumer Advocates Member Sub-Class.

(v) State and Provincial Energy Authority/Tribes/Certain Public Interest Groups: The voting power of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class shall be allocated as follows:

(a) one (1) votes' worth of voting power held by the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class shall be held by the Members of the Tribes Member Sub-Class;

(b) one (1) votes' worth of voting power held by the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class shall be held by the Members of the Certain Public Interest Groups Member Sub-Class; and

(c) the balance of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class' voting power (either four (4) votes or five (5) votes as determined pursuant to Section 5.14.1(i)) shall be held by the Members of the State and Provincial Energy Authority Member Sub-Class.

5.14.4 Allocation of Voting Power When Member Class Has Zero Members or When Member Sub-Class Thresholds Are Not Met.

(i) If the Member Class has zero (0) Members, then

(a) the voting power of that Member Class shall be allocated equally to other Member Classes that have at least one (1) Member, and

(b) within each such Member Class the reallocated voting power shall be allocated to each Member Sub-Class in the same ratio as the Member Class's voting power is allocated between the Member Sub-Classes; provided, however, that such reallocated voting power shall be subject to further reallocation pursuant to Sections 5.14.4(ii) through (vi).

(ii) If a Member Sub-Class has fewer than the threshold number of Members established for that Member Sub-Class in Section 5.14.2, the voting power for that Member Sub-Class set forth in Section 5.14.3 will be reduced in an amount determined according to Section 5.14.4(iii), and the amount of the reduction in voting power will be reallocated according to Section 5.14.4(iv).

(iii) The formula for calculating the voting power reduction of a Member Sub-Class is as follows:

$$V * (1 - (M / T)) = A$$

The numerator "M" is the number of Members in the Member Sub-Class.

The denominator "T" is the threshold for the Member Sub-Class.

The variable “V” is the initial voting power for the Member Sub-Class set forth in Section 5.14.3, as adjusted under Section 5.14.4.(i).

The result “A” is the amount by which the Member Sub-Class’s voting power is reduced. (Refer to Section 5.14.4(v) Step 2(c) for the formula to calculate the Member Sub-Class’s revised voting power.)

(iv) Reallocate the reduced voting power calculated in Section 5.14.4(iii) as follows:

(a) [Reserved for possible future use: If the Member Class has two (2) Member Sub-Classes and neither of the Member Sub-Classes meets its threshold, then each such Member Sub-Class will exercise its full voting power; provided, however, that if one (1) of such Member Sub-Classes has zero (0) Members, and the other Member Sub-Class has one (1) or more Members, such other Member Sub-Class will exercise the entire voting power of the Member Class.]

(b) [Reserved for possible future use: If the Member Class has two (2) Member Sub-Classes and only one (1) of the Member Sub-Classes meets its threshold, the Member Sub-Class that meets its threshold will be allocated additional voting power from the Member Sub-Class that did not meet its threshold. The voting power of the Member Sub-Class meeting its threshold is calculated as follows:

$$V + A = V_{\text{revised}}$$

“V” is the initial voting power for the Member Sub-Class as set forth in Section 5.14.3, as adjusted under Section 5.14.4.(i).

“A” is the amount of voting power of the Member Sub-Class that did not meet its threshold to be reallocated to the other Member Sub-Class in the Member Class (that was calculated in Section 5.14.4(iii)).

“V<sub>revised</sub>” is the revised voting power (with the amount reallocated from the Member Sub-Class that failed to meet its threshold added to the original voting power).]

(c) If the Member Class has three (3) Member Sub-Classes and none of the Member Sub-Classes meets its threshold, then (unless (d) or (e) applies) each Member Sub-Class will exercise its full voting power.

(d) If the Member Class has three (3) Member Sub-Classes and two (2) of the Member Sub-Classes have zero (0) Members but the third Member Sub-Class has one (1) or more Members, the third Member Sub-Class will exercise the entire voting power of the Member Class.

(e) If the Member Class has three (3) Member Sub-Classes and one (1) of the Member Sub-Classes has zero (0) Members, then apply (1), (2), or (3) as follows:

(1) If both of the other Member Sub-Classes meet their threshold, then the voting power of the Member Sub-Class having zero (0) Members will be allocated to the other two (2) Member Sub-Classes as set forth in Section 5.14.4(v); provided, however, that at any time that the Large Generating End-Use Consumers Member Sub-Class or the Power Marketers and Others Member Sub-Class has zero (0) Members, the voting power of the Generators Member Sub-Class shall be increased by the entire amount of voting power initially allocated to the Member Sub-Class with zero (0) Members.

(2) If one (1) of the other Member Sub-Classes meets its threshold, but the other does not, the Member Sub-Class that meets its threshold will exercise the voting power of the Member Class having zero (0) Members and will be allocated the amount by which the Member Sub-Class's voting power is reduced (equal to "A" as calculated in Section 5.14.4(iii)).

(3) If both of the other Member Sub-Classes have Members, but both fail to meet their respective thresholds, those Member Sub-Classes will exercise the full voting power of their respective Member Sub-Class and will be allocated the voting power of the Member Sub-Class having zero (0) Members as set forth in Section 5.14.4(v).

(f) If the Member Class has three (3) Member Sub-Classes and two (2) of the Member Sub-Classes fail to meet their threshold, then "A", the reduced voting power for each of the two (2) Member Sub-Classes (as calculated in Section 5.14.4(iii)), is added to the voting power of the one (1) Member Sub-Class that achieved its threshold.

(g) If the Member Class has three (3) Member Sub-Classes and one (1) of the Member Sub-Classes fails to meet its threshold, then "A", the reduced voting power of the Member Sub-Class that fails to meet its threshold shall be reallocated between the two (2) Member Sub-Classes that meet their respective thresholds as set forth in Section 5.14.4(v); provided, however, that at any time that the Large Generating End-Use Consumers Member Sub-Class or the Power Marketers and Others Member Sub-Class has fewer than the threshold number of Members applicable to such Member Sub-Class, the voting power of

the Generators Member Sub-Class shall be increased by an amount equal to any resulting reduction in voting power of the Large Generating End-Use Consumers Member Sub-Class or the Power Marketers and Others Member Sub-Class (as the case may be).

(v) If a Member Class has three (3) Member Sub-Classes, reallocating the reduced voting power of one (1) of the Member Sub-Classes to the other two (2) Member Sub-Classes occurs as follows:

Step 1: Calculate the ratio of the voting power of the Member Sub-Classes that did not have their voting power reduced as follows:

The formulas for calculating the ratios of Member Sub-Class voting powers are as follows:

First Formula:

$$V_{\text{least}} / (V_{\text{least}} + V_{\text{most}}) = V_{\text{ratio}}$$

“ $V_{\text{least}}$ ” is the voting power of the Member Sub-Class with the least voting power.

“ $V_{\text{most}}$ ” is the voting power of the Member Sub-Class with the most voting power.

“ $V_{\text{ratio}}$ ” is the ratio of the Member Sub-Class with the least voting power (of the two (2) Member Sub-Classes that did not have their voting power reduced) to the combined voting power of the two (2) Member Sub-Classes that did not have their voting power reduced.

Second Formula:

“ $1 - V_{\text{ratio}}$ ” is the formula for calculating the ratio of voting power for the Member Sub-Class with the most voting power to the combined voting power of the two (2) Member Sub-Classes that did not have their voting power reduced.

Step 2: Reallocate the voting power based upon the ratio of the voting power between the Member Sub-Classes as follows:

(a) The formula for calculating the reallocated voting power for the Member Sub-Class with the higher initial voting power is:

$$(A * (1 - V_{\text{ratio}})) + V = V_{\text{revised}}$$

“A” is the amount the Member Sub-Class’s voting power is reduced as provided in Section 5.14.4(iii).

“1 - V<sub>ratio</sub>” is the voting power ratio for the Member Sub-Class with the most voting power that was calculated above in Step 1.

“V” is the initial voting power for the Member Sub-Class as set forth in Section 5.14.3, as adjusted under Section 5.14.4.(i).

“V<sub>revised</sub>” is the revised voting power (with the amount reallocated added to the original voting power).

(b) The formula for calculating the reallocated voting power for the Member Sub-Class with the lower initial voting power is:

$$(A * V_{\text{ratio}}) + V = V_{\text{revised}}$$

“A” is the amount the Member Sub-Class’s voting power is reduced as provided in Section 5.14.4(iii).

“V<sub>ratio</sub>” is the ratio of the Member Sub-Class with the least voting power that was calculated above in Step 1.

“V” is the initial voting power for the Member Sub-Class as set forth in Section 5.14.3, as adjusted under Section 5.14.4.(i).

“V<sub>revised</sub>” is the revised voting power (with the amount reallocated added to the original voting power).

(c) The formula for calculating the revised voting power for the Member Sub-Class that failed to meet its threshold is:

$$V - A = V_{\text{revised}}$$

“V” is the initial voting power for the Member Sub-Class as set forth in Section 5.14.3, as adjusted under Section 5.14.4.(i).

“A” is the amount the Member Sub-Class’s voting power is reduced as provided in Section 5.14.4(iii).

“V<sub>revised</sub>” is the revised voting power (with the amount reallocated, subtracted from the original voting power).

(vi) Exhibit E illustrates the application of Section 5.14.4.

**5.14.5 Tabulation of Member Override Votes.** This Section 5.14.5 applies to Member votes on resolutions to dissolve the Corporation submitted to the Members under Article XIII.

(i) If four (4) out of five (5) Member Classes vote, each by a margin of at least two-thirds (2/3) of the total voting power held by the Member Class, against a resolution by the Developmental Board of Trustees to dissolve the Corporation submitted to the Members under Article XIII, then the Developmental Board of Trustees’ proposal or resolution shall be overridden and the dissolution shall not proceed.

(ii) The vote by each Member Class shall be tabulated separately. In addition, with respect to Member Classes that include Member Sub-Classes, the proportion of voting power cast in each Member Sub-Class shall be tabulated separately, then aggregated with the tabulation of other Member Sub-Class votes within the Member Class to determine the proportion of voting power within the Member Class as a whole that has voted in favor of or against the resolution. An example of how Member Class and Member Sub-Class voting power is to be calculated is set forth in Exhibit E.

**5.14.6 Tabulation of Member Votes to Approve Bylaws Amendments.** This Section 5.14.6 applies to Member votes with respect to proposed amendments of these Developmental Bylaws under Section 7.2.6.

(i) If four (4) out of five (5) Member Classes vote, each by a margin of at least two-thirds (2/3) of the total voting power held by the Member Class, in favor of an amendment to these Developmental Bylaws proposed by the Developmental Board of Trustees in accordance with Section 7.2.6, then the proposal amendment shall be approved and shall take effect.

(ii) The vote by each Member Class shall be tabulated separately. In addition, with respect to Member Classes that include Member Sub-Classes, the proportion of voting power cast in each Member Sub-Class shall be tabulated separately, then aggregated with tabulation of other Member Sub-Class votes within the Member Class to determine the proportion of voting power within Member Class as a whole that has voted in favor of or against the proposal or resolution. An example of how Member Class and Member Sub-Class voting power is to be calculated is set forth in Exhibit E.

**5.14.7 Tabulation of Member Votes to Elect Members Representative Committee Members.** The tabulation of Member votes with respect to electing MRC members shall be as specified in Section 6.3, and the manner of tabulating Member votes with respect to meetings to remove the MRC members shall be as set forth in the applicable provisions of Section 6.6.

5.14.8 Tabulation of Other Member Votes. Any Member vote other than votes pursuant to Sections 5.14.5 through 5.14.7 and 5.15 (including any Member vote pursuant to Section 12.2) shall pass if a simple majority of the voting power of the Members' votes cast favor the proposal or resolution on which they are voting. The vote by each Member Sub-Class (or Member Class without Member Sub-Classes) shall be tabulated separately and then added together to determine whether the voting power in favor is greater than fifty percent (50%) of the voting power cast. An example of how Member Class and Member Sub-Class voting power is to be calculated is set forth in Exhibit E.

5.15 Member Advisory Votes Conducted by the Board of Trustees. The voting rules applicable to Member advisory votes conducted by the Interim or Developmental Board of Trustees shall be as specified by the Interim or Developmental Board of Trustees with respect to the matter being submitted to an advisory vote. If the Board does not specify special voting rules, the voting rule and tabulation of such Member advisory votes shall be as described in Section 5.14.8.

5.16 Restrictions on Transfer. No Member may transfer or assign its membership in the Corporation, or any right or interest therein, to any other Person, whether voluntarily or by operation of law, and any such attempted transfer or assignment shall be null and void and without any force or effect whatsoever; provided, however, that notwithstanding the foregoing, a Member may, with the prior consent of the Secretary of the Corporation, transfer or assign its membership in the Corporation, and all (but not less than all) of its rights and interests therein, to any Person (other than another Member or the Affiliate of another Member) that acquires all or substantially all of the assets or stock of, or all or substantially all of the partnership, limited liability company membership, or other ownership interests in, the Member. Notwithstanding any such permitted transfer or assignment, all dispute resolution proceedings and appeals that are in effect or pending as of the date of such transfer or assignment shall be followed to completion by the transferring or assigning Member and by other affected Members pursuant to these Developmental Bylaws.

5.17 Effect of Membership. A Member of the Corporation acquires no proprietary or operational interest whatsoever in facilities used in interstate transmission or wholesale sales of electric energy in interstate commerce solely as a consequence of membership in the Corporation.

## ARTICLE VI

### MEMBERS REPRESENTATIVE COMMITTEE

6.1 Powers and Rights of Members Representative Committee Members. The Corporation shall have a Members Representative Committee (or "MRC"), which, subject to these Developmental Bylaws and applicable law, shall have the following rights and powers:

6.1.1 Exclusive Members Representative Committee Rights and Powers. The MRC shall have the exclusive right and power to

- (i) nominate and elect members of the Developmental Board of Trustees pursuant to Section 7.2.7; and
- (ii) remove any Developmental Board Trustee without cause pursuant to Section 7.3.

6.1.2 Nonexclusive Members Representative Committee Rights and Powers. The MRC shall have the nonexclusive right and power to

- (i) fill vacancies of the Membership Dispute Resolution Committee pursuant to Section 5.4.2; and
- (ii) remove any Developmental Board Trustee for cause pursuant to Section 7.3.

6.2 Number of Members Representative Committee Members. There shall be thirty (30) members of the MRC (unless decreased pursuant to Section 6.3.3(i) or increased to thirty-one (31) pursuant to Section 6.3.2(v)(a)), elected as specified in Section 6.3. Each Member Class, as a whole, shall be entitled to elect six (6) members of the MRC (unless decreased pursuant to Section 6.3.3(i) or increased for the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class pursuant to Section 6.3.2(v)(a)).

6.3 Election of Members Representative Committee Members.

6.3.1 Member Rights to Elect Members Representative Committee Members. The members of the MRC shall be elected by the Members to represent their Member Class or Member Sub-Class. In any election of members of the MRC, Members shall vote by Member Class or Member Sub-Class, and each voting Member in each Member Class or Member Sub-Class shall have the same voting rights as every other Member in such Member Class or Member Sub-Class.

6.3.2 General Rule for Election of Members Representative Committee Members. In the election of members of the MRC, the voting rights of the Members shall be as set forth in Sections 6.3.2(i) through 6.3.2(v) for a Member Class or Member Sub-Class with no threshold and at least one (1) Member and a Member Class with thresholds in which each Member Sub-Class has at least the threshold number of Members specified for each Member Sub-Class in Section 5.14.2. If a Member Class or Member Sub-Class has no threshold and zero (0) Members or a Member Class has one (1) or more Member Sub-Classes with thresholds and fewer than the applicable threshold number of Members, then the voting rights shall be as set forth in Section 6.3.3.

- (i) Major Transmitting Utilities Member Class. Six (6) members of the MRC shall be representatives of, and shall be elected by, the Members of the Major Transmitting Utilities Member Class that are entitled to vote under Section 5.14.3(i). The slate of nominees for election as MRC members representing the Major Transmitting

Utilities Member Class may include a maximum of one (1) representative of each Member unless there are fewer such Members than vacancies.

(ii) Transmission-Dependent Utilities Member Class. In the election of members of the MRC, the voting rights of the Members in the Transmission-Dependent Utilities Member Class shall be as follows:

(a) three (3) members of the MRC shall be representatives of, and shall be elected by, the Members in the Transmission-Dependent Utilities Member Class that are Large TDUs, and such Large TDUs shall be entitled to nominate and vote in the election of such three (3) members of the MRC; Members that are Large TDUs may cast their votes cumulatively when voting in an election of members of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC; and

(b) three (3) members of the MRC shall be representatives of, and shall be elected by, the Members in the Transmission-Dependent Utilities Member Class that are Small TDUs, and such Small TDUs shall be entitled to nominate and vote in the election of such three (3) members of the MRC; Members that are Small TDUs may cast their votes cumulatively when voting in an election of members of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC.

(iii) Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class. In the election of members of the MRC, the voting rights of the Members in the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class shall be as follows:

(a) four (4) members of the MRC shall be representatives of, and shall be elected by, the Members of the Generators Member Sub-Class of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, and such Members shall be entitled to nominate and vote in the election of such four (4) members of the MRC, but shall not (except as provided in Section 6.3.3(iv)) be entitled to nominate or vote in the election of any other members of the MRC;

(b) one (1) member of the MRC shall be a representative of, and shall be elected by, the Members of the Large Generating End-Use Consumers Member Sub-Class of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, and such Members shall be entitled to nominate and vote in the election of such member of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC; and

(c) one (1) member of the MRC shall be a representative of, and shall be elected by, the Members of the Power Marketers and Others Member

Sub-Class of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, and such Members shall be entitled to nominate and vote in the election of such member of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC.

(iv) End-Use Consumers Member Class. In the election of members of the MRC, the voting rights of the Members of the End-Use Consumers Member Class shall be as follows:

(a) two (2) members of the MRC shall be representatives of, and shall be elected by, Large Unbundled End-Use Consumers. Members that are Large Unbundled End-Use Consumers shall be entitled to nominate and vote in the election of such members of the MRC in accordance with the foregoing rights, but shall not be entitled to nominate or vote in the election of any other members of the MRC;

(b) one (1) member of the MRC shall be the representative of, and shall be elected by, Large Bundled End-Use Consumers. Members that are Large Bundled End-Use Consumers shall be entitled to nominate and vote in the election of such members of the MRC in accordance with the foregoing rights, but shall not be entitled to nominate or vote in the election of any other members of the MRC; and

(c) three (3) members of the MRC shall be representatives of, and shall be elected by, Consumer Advocates. Members that are Consumer Advocates shall be entitled to nominate and vote in the election of such members of the MRC in accordance with the foregoing rights, but shall not be entitled to nominate or vote in the election of any other members of the MRC.

(v) State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class. In the election of members of the MRC, the voting rights of the Members of the State and Provincial Energy Authority/Tribes/Certain Public Interest Groups Member Class shall be as follows; provided, however, that *ex officio* Members of the State and Provincial Energy Authority Member Sub-Class may neither vote nor serve as representatives to the MRC:

(a) four (4) members of the MRC shall be representatives of, and shall be elected by, State and Provincial Energy Authorities; provided, however, if the State and Provincial Authority Member Sub-Class has five (5) or more Members, it shall elect five (5) members of the MRC. Members that are State or Provincial Energy Authorities shall be entitled to nominate and vote in the election of such members of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC;

(b) one (1) member of the MRC shall be the representative of, and shall be elected by, Tribes. Members that are Tribes shall be entitled to

nominate and vote in the election of such member of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC; and

(c) one (1) member of the MRC shall be the representative of, and shall be elected by, Certain Public Interest Groups. Members that are Certain Public Interest Groups shall be entitled to nominate and vote in the election of such member of the MRC, but shall not be entitled to nominate or vote in the election of any other members of the MRC.

**6.3.3 Special Rules for Election of Members Representative Committee**  
**Members when Thresholds Not Met or Zero Members.** If a Member Class or Member Sub-Class has no threshold and zero (0) Members or a Member Class has one (1) or more Member Sub-Classes with thresholds and fewer than the applicable threshold number of Members (as specified in Section 5.14.2), then the voting rights shall be as set forth in this Section 6.3.3.

(i) If a Member Class has zero (0) Members (whether or not there is a threshold for that Member Class), then the Member Class shall not be entitled to elect any MRC members and the total number of members of the MRC shall be reduced by six (6) for every Member Class that has zero (0) Members.

(ii) If a Member Sub-Class has no threshold and zero (0) Members, then the Member Sub-Class shall not be entitled to elect any MRC members.

(iii) If a Member Sub-Class has a threshold and does not meet that threshold, then the Member Sub-Class shall elect a number of representatives to the MRC according to the following formula:

$$\left(\frac{M}{T}\right) * R = R_{\text{revised}}$$

The numerator “M” is the number of Members in the Member Sub-Class.

The denominator “T” is the threshold for the Member Sub-Class.

The variable “R” is the number of MRC representatives assigned to the Member Sub-Class in Section 6.3.2.

The result “R<sub>revised</sub>” is rounded to the next highest whole number if the first digit following the decimal is five (5) or greater, or rounded to the next lower whole number (including zero (0)) if the first digit following the decimal is less than five (5) and represents the number of MRC representatives the Member Sub-Class may elect.

By way of illustration, if a Member Sub-Class is entitled to elect five (5) MRC representatives upon meeting its threshold of five (5) Members, but there are only four (4) Members in the Member Sub-Class, then the Member Sub-Class elects four (4) MRC representatives, as shown by the following calculation:

$$\left(\frac{4}{5}\right) * 5 = 4$$

By way of further illustration, if a Member Sub-Class has no Members, it will have no MRC representative elected only to represent the interest of that Member Sub-Class, as shown by the following calculation:

$$\left(\frac{0}{5}\right) * 5 = 0$$

(iv) If, by operation of Section 6.3.3(ii) or Section 6.3.3(iii), a Member Sub-Class has elected fewer than the maximum number of MRC representatives that it would otherwise have been entitled to elect in accordance with Section 6.3.2, then the Member Class as a whole shall elect the remaining MRC representatives necessary to reach the number of MRC representatives provided for that Member Class in Section 6.2, provided, however, that if the affected Member Class is the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class, then, at any time that the number of Members of the Generators Member Sub-Class is greater than or equal to one, the Generators Member Sub-Class alone shall elect a sufficient number of additional MRC representatives to bring the total number of MRC representatives of the Generators, Power Marketers, Large Generating End-Use Consumers, and Others Member Class to six (6).

**6.3.4 Notice of Members Representative Committee Election Meetings.** Notice of any meeting for the election of one (1) or more MRC members shall be sent (to those Members eligible to vote in that election of MRC members) not less than thirty (30) and not more than fifty (50) days prior to the date of the meeting, in accordance with the provisions of Section 5.10. The meeting of the Members to conduct the first election of members of the MRC may not be held until the Funding Agreement has been executed, as required by Section 7.1.13(iii)(c). Any Member in any Member Class wishing to nominate any individual for consideration in any such election shall be required to submit the name of such nominee (along with a statement of qualifications, not exceeding two (2) pages in length in any instance, for each nominee) to the Secretary of the Corporation within ten (10) days of the meeting notice date. The Secretary of the Corporation shall, immediately after expiration of such nomination deadline, notify the Members eligible to vote for a given nominee of the names of the nominees for members of the MRC and distribute to each such Member a copy of the statement of qualifications of each such nominee.

**6.3.5 Vote to Elect Members Representative Committee Members.** The members of the MRC shall be elected by the affirmative vote, by Member Class (or Member

Sub-Class, as the case may be), of the Members present and entitled to vote in the applicable Member Class (or Member Sub-Class, as the case may be) at a duly held meeting of such Members. Subject to Section 6.3.2, in any election of members of the MRC,

(i) each Member in each Member Class (or Member Sub-Class, as the case may be) shall be entitled to a number of votes equal to the number of MRC vacancies to be filled by such Member's Member Class (or Member Sub-Class, as the case may be) in such election;

(ii) each Member in each Member Class (or Member Sub-Class, as the case may be) shall be entitled to vote for any nominee for election as a representative of such Member Class (or Member Sub-Class, as the case may be) on the MRC; and

(iii) no Member may cast more than one (1) vote for any given nominee (except as otherwise provided with respect to the Transmission-Dependent Utilities Member Class in Section 6.3.2(ii)).

The nominees of each Member Class or Member Sub-Class shall be ranked according to the number of votes received by each, and the number of nominees who receive the largest number of votes in such Member Class or Member Sub-Class, up to the number of nominees as is equal to the number of MRC vacancies to be filled by such Member Class or Member Sub-Class, as the case may be, in such election, shall be elected to fill such MRC vacancies. If one (1) or more MRC vacancies cannot be filled because two (2) or more nominees receive the same number of votes, a runoff election shall be held among the tied nominees for each such vacancy. In such runoff election, each Member in the Member Class or Member Sub-Class may cast one (1) vote for one (1) of the tied nominees for each such vacancy. The nominee who receives the largest number of votes shall be elected to fill such MRC vacancy. Immediately following any election of MRC members, the Secretary of the Corporation shall provide official notice of the results of such election to the Members.

#### 6.4 Procedures in Election of Members Representative Committee Members.

6.4.1 Election of First Full Members Representative Committee. The members of the first full MRC shall be elected in accordance with the provisions of Section 6.3, as appropriate.

6.4.2 Member Participation in Members Representative Committee Nominations and Elections. The Interim and Developmental Boards of Trustees shall develop such procedures as they deem reasonable and necessary to ensure that the Members in each Member Class are aware of their right to participate in the nomination and election of MRC members. Unless otherwise specified herein, the Secretary of the Corporation shall determine the appropriate mechanisms and election procedures for elections of MRC members, based on time constraints and other relevant factors. Elections may be held by written ballot at a meeting, votes cast at a meeting, or such other procedures as the Secretary of the Corporation designates.

6.5 Term of Office of Members Representative Committee Members. The term of office for MRC members shall extend only until either the MRC is elected under the Operational Bylaws or the Corporation is dissolved, whichever comes first.

6.6 Resignation or Removal of Members Representative Committee Members; Vacancies. A resignation of an MRC member shall be effective upon receipt of written notice by the chairperson of the MRC, or the President or the Secretary of the Corporation, unless the notice specifies a later time of effectiveness. A Member Class or Member Sub-Class may remove any MRC member whom it has elected at any time, with or without cause, by the affirmative vote of a majority of the Members present and entitled to vote in such Member Class (or Member Sub-Class, as the case may be) at a duly held meeting of the Members of such Member Class (or Member Sub-Class, as the case may be). The MRC may remove any MRC member at any time, but only for cause, if at least twenty (20) of the MRC members vote in favor of such removal, at least four (4) of whom must be representatives of the same Member Class as the MRC member who is the subject of the removal vote. If a vacancy occurs, the Members entitled under these Developmental Bylaws to elect such MRC member shall fill the vacancy in accordance with the provisions of Section 6.3 at a duly held meeting called in accordance with Section 5.10; provided, however, that a meeting of only the Member Class or Member Sub-Class is required for any election or removal in which only a Member Class or Member Sub-Class is entitled to vote. A MRC member so elected shall serve for the unexpired term of his or her predecessor. For purposes of this Section 6.6, "for cause" shall include, without limitation, a failure on the part of any MRC member, in any fiscal year, to attend more than one-half (1/2) of the meetings of the MRC held during such year.

6.7 Meetings of the Members Representative Committee.

6.7.1 First Members Representative Committee Meeting. The MRC shall meet on the date established by the Interim Board for the MRC's first meeting pursuant to Section 7.1.13(iii)(b). At the first meeting of the MRC, the MRC shall elect officers, including a chairperson of the MRC to preside over meetings.

6.7.2 Regular and Special Members Representative Committee Meetings. Regularly scheduled or special meetings shall be held at such times as shall from time to time be fixed by the chairperson of the MRC. Special meetings of the MRC for any purpose or purposes permitted by these Developmental Bylaws may be called at any time by the chairperson of the MRC or by any ten (10) MRC members.

6.7.3 Permitted Means of Members Representative Committee Meeting Participation. Members of the MRC may participate in a meeting through the use of conference telephone, electronic video screen communication, or similar communications equipment, so long as all MRC members participating in such meeting can hear one another at the same time. Participation in a meeting pursuant to this Section 6.7.3 shall constitute presence in person at such meeting.

6.7.4 Members Representative Committee Action by Consent in Writing. The MRC may, subject to any applicable law, take any action without a meeting, if a consent in

writing, setting forth the action so taken, shall be signed by all of the Committee members then in office.

6.7.5 Members Representative Committee Meeting Minutes. The Secretary of the Corporation shall maintain minutes of each meeting of the MRC or subcommittee thereof, and each written consent of the MRC or any subcommittee thereof.

6.8 Notice of Members Representative Committee Meetings. Notice of regularly scheduled and special meetings shall be given to the MRC members not less than fifteen (15) days prior to the meeting if delivered by first-class mail or not less than ten (10) days prior to the meeting if the notice is delivered personally, by telephone, by facsimile, or by electronic mail; provided, however, that notice of special meetings shall not be sent by electronic mail.

6.9 Closed Meetings of Members Representative Committee. In the interests of facilitating participation by the broadest and most diverse array of qualified candidates in the Trustees selection process and to protect the confidentiality of information relating to actual or potential candidates for election to the Developmental Board of Trustees, meetings of the MRC shall, except as otherwise determined by the MRC, be closed.

6.10 Waivers of Members Representative Committee Meeting Notice. The notice requirements contained in these Developmental Bylaws may be waived in writing by any MRC member with respect to himself or herself, either before or after the meeting. The attendance by any MRC member at a meeting shall constitute a waiver of notice of such meeting except where such MRC member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. All waivers shall be made part of the minutes of the meetings.

6.11 Quorum of Members Representative Committee Members. A quorum for any meeting of the MRC shall be a majority of the MRC members then in office. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of MRC members, if any action taken is approved by the required number of MRC members, as specified in these Developmental Bylaws. A majority of the MRC members then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

6.12 Voting of Members Representative Committee Members. The affirmative vote of a majority of the MRC members then in office shall be the act of the MRC. Each voting MRC member shall have one (1) vote. MRC members may not vote by proxy, and shall not be required to vote by class. When voting on matters coming before the MRC, each MRC member shall take into consideration the interests of the Member Class, the interests of the Members that appointed or elected the representatives, and the purposes of the Corporation as set forth in Article III and thereafter make a decision that each MRC member believes in his or her discretion is appropriate. In addition, when selecting individuals for the Board of Trustees, each MRC member shall endeavor to select individuals who, in the judgment of each such MRC member, best satisfy the criteria set forth in Section 7.1.13(ii).

6.13 Subcommittees of Members Representative Committee. The MRC may designate one (1) or more subcommittees to assist the MRC in carrying out its functions under these Developmental Bylaws, each consisting of seven (7) or more MRC members, to serve at the pleasure of the MRC. Appointments to such subcommittees shall be made annually by a two-thirds (2/3) vote of the MRC members then in office. Each subcommittee shall have such authority of the MRC as is delegated by resolution of the MRC, except that no subcommittee, regardless of the MRC resolution, may elect, appoint, or remove any member of such subcommittee, any member of the MRC, or any Trustee.

## ARTICLE VII

### BOARD OF TRUSTEES

#### 7.1 Interim Board of Trustees.

7.1.1 Purposes and Authorities; Mandatory Reorganization The Interim Board of Trustees shall administer the transition of the Corporation from a nonmembership corporation to a member corporation, in accordance with the membership application procedures set forth below. The Interim Board shall have the authority to

(i) borrow funds and establish and exercise lines of credit, limited to the funding available through the funding agreement in effect as of the date of the adoption of these Developmental Bylaws;

(ii) hire and contract for personnel to perform tasks, studies, and activities consistent with the Developmental Stage purposes set forth in Article III, including, without limitation, continuing the development of the Seams Steering Group-Western Interconnection and its efforts relating to inter-regional planning, coordination, and market monitoring within the Western Interconnection; and

(iii) to reorganize as a nonmembership, nonprofit corporation controlled by the Interim Board of Trustees:

(a) if the Developmental Board has not been seated within eight (8) months from the date of the adoption of these Developmental Bylaws, or

(b) within sixty (60) days after any decision by the Bonneville Power Administration not to execute the Funding Agreement.

7.1.2 Interim Board of Trustees Members. The Interim Board of Trustees is composed of Frank Afranji, H. Charles Durick, Allen Burns, John Carr, Randall O. Cloward, Kimberly Harris, Yakout Mansour, Paul Schmidt, and Ted D. Williams. The Interim Board of Trustees may expand its membership to include a representative of any Major Transmitting Utility Member that is not represented by one of the foregoing Interim Board members. An Interim Board Trustee is a representative of a Major Transmitting Utility if the Interim Board

Trustee is an employee, officer, or agent of the Major Transmitting Utility or of an independent operator of the Major Transmitting Utility's transmission facilities.

7.1.3 Interim Board Term. The Interim Board of Trustees shall serve until the Developmental Board of Trustees is elected in accordance with the provisions of Section 7.2.7, or until the Corporation is dissolved, whichever occurs first.

7.1.4 Vacancies. Vacancies on the Interim Board of Trustees shall be filled by the affirmative vote of a majority of the remaining Interim Board Trustees.

7.1.5 Compensation of Interim Board Trustees. Members of the Interim Board of Trustees shall not receive compensation from the Corporation whether as a Trustee or an officer. While serving as a Trustee, an Interim Board Trustee shall not be an employee of the Corporation or a consultant to the Corporation.

7.1.6 Prohibition Against Gifts and Loans to Interim Board Trustees. The Corporation shall not make any gift or loan of money or property to or guarantee the obligation of any Interim Board Trustee or Related Person of an Interim Board Trustee.

7.1.7 Interim Board of Trustees Conduct Rules. The conduct rules for the Interim Board of Trustees are attached to these Developmental Bylaws as Exhibit B1.

7.1.8 Notice of Meetings of the Interim Board of Trustees. Notice of meetings of the Interim Board of Trustees shall be given to the Interim Board Trustees not less than ten (10) days prior to the meeting if delivered by first-class mail or not less than five (5) days prior to the meeting if the notice is delivered personally, by telephone, by facsimile, or by electronic mail.

7.1.9 Waivers of Interim Board Meeting Notice. The notice requirements contained in Section 7.1.8 may be waived in writing by any Interim Board Trustee with respect to himself or herself, either before or after the meeting. The attendance by any Interim Board Trustee at a meeting shall constitute a waiver of notice of such meeting except when such Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. All waivers shall be made part of the minutes of the meetings.

7.1.10 Attendance at Meetings. Interim Board Trustees may participate in an Interim Board of Trustees meeting through the use of conference telephone, electronic video screen communication, or similar communications equipment, so long as all Trustees participating in the meeting can hear one another at the same time. Participation in a meeting pursuant to this Section 7.1.10 shall constitute presence in person at the meeting.

7.1.11 Quorum of Interim Board Trustees. A majority of the Interim Board Trustees then in office shall constitute a quorum. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees if any action taken is approved by the required number of Trustees as specified in these Developmental

Bylaws. A majority of the Trustees then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

7.1.12 Voting of Interim Board Trustees. The affirmative vote of a majority of the Interim Board Trustees then in office shall be the act of the Interim Board of Trustees. Each Interim Board Trustee shall have one vote. Trustees may not vote by proxy. The Interim Board of Trustees may, subject to any applicable law, take any action without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees then in office.

7.1.13 Establishment of Developmental Board.

(i) For purposes of identifying suitable nominees for election to the Developmental Board of Trustees, the Interim Board of Trustees shall select and retain one (1) of the following executive search firms to identify qualified Developmental Board candidates satisfying the requirements of these Developmental Bylaws:

- (a) Heidrick & Struggles International;
- (b) Korn/Ferry International;
- (c) Russell Reynolds Associates; or
- (d) any successor or any other executive search firm that possesses broad and long-standing experience in searches for members of the boards of directors or trustees of entities across a broad range of industries.

(ii) Prior to election of the Developmental Board of Trustees, the executive search firm selected by the Interim Board shall develop a slate of qualified candidates. The Interim Board of Trustees, in consultation with the MRC, may direct the firm to provide a specific number of candidates, with the minimum to be equal to the number of vacancies plus one (1) and the maximum to be twice the number of vacancies to be filled in such election. The slate of qualified candidates should include individuals possessing, collectively, knowledge of the operational characteristics of the Pacific Northwest power system and executive management experience or board experience with electric utilities and personal abilities and qualities, such as integrity and leadership, problem-solving, facilitation, and consensus-building. The search firm shall also endeavor to include individuals with relevant experience in commodities markets (including commodities trading risk management), electric bulk power transmission in the Western Interconnection, utilities law, finance, economics, accounting, information technology, engineering, regulation, and public policy, and to achieve racial, ethnic, age, and gender diversity. In screening potential candidates the executive search firm shall be instructed to exclude any candidate likely to have a conflict of interest with the duties of a Trustee. The executive search firm shall also be instructed to obtain appropriate disclosures by candidates (covering themselves and Related Persons to such candidates) regarding financial interests in or other potential conflicts of interest with Market Participants, Members, and major contractors of the Corporation. Such disclosures shall

also include any such financial interests or other potential conflicts of interest known by the candidates with respect to other family relations of the candidates. The disclosures of qualified candidates shall be made available on a confidential basis to the MRC upon its election.

(iii) Immediately upon a determination by the Interim Board that the Funding Agreement has been fully executed to fund the period from the election of the Developmental Board of Trustees through the remainder of the Developmental Stage, the Interim Board shall

- MRC;
- (a) establish a Members meeting date for the election of the
  - (b) establish a date for the first meeting of the MRC; and
  - (c) provide notice of such elections and dates to the Members, the Regional Representatives Group members, Participating Jurisdictions, and to each person on mailing lists provided to the Interim Board by utilities, independent generators, power marketers, large end-users and consumer advocates, tribes, and public interest organizations that are either located in or engage in energy transactions in the Geographic Area. The meeting date for the election of the MRC shall be no earlier than thirty (30) days after the Funding Agreement has been executed and the notices are sent. The date for the election of the Developmental Board of Trustees shall be no later than forty-five (45) days after the election of the MRC.

(iv) At its first meeting, the MRC shall review candidates and shall nominate for election as Trustees at least five (5) candidates whom the MRC determines satisfy the requirements of these Developmental Bylaws for nominees to the Developmental Board. If the MRC determines that one or more nominees should run unopposed for election as a Trustee, the MRC may nominate such candidate(s) by an affirmative vote of no less than twenty (20) members.

(v) The notice required by Section 7.1.13(iii)(c) shall also invite applications for membership in order to become a Member eligible to participate in voting for the MRC. The notice shall provide a description of the Member Classes, the requirements for membership, the membership application procedure, and the deadline for membership determinations and the dispute resolution process described in Sections 5.4.6 and 5.6, respectively.

**7.1.14 Interim Board of Trustees Amendment of Developmental Bylaws.** The Interim Board of Trustees may not amend any provision of these Developmental Bylaws; provided, however, that after eight (8) months from the date of adoption of these Developmental Bylaws, if the Developmental Board has not been seated, the Interim Board of Trustees may amend the Bylaws to reorganize as a nonmembership, nonprofit corporation controlled by the Interim Board of Trustees.

7.2 Developmental Board of Trustees.

7.2.1 Powers of the Developmental Board of Trustees. Subject to any limitation set forth in these Developmental Bylaws and the Corporation's Articles of Incorporation, the Developmental Board shall be responsible for, and shall have the right to exercise (or direct the exercise of) all powers and authorities with respect to, the business and affairs of the Corporation, and shall carry out the purposes of the Corporation as stated in Article III during its Developmental Stage.

7.2.2 Specific Authorities. Without in any way limiting the provisions of Section 7.2.1, during the Developmental Stage, the Developmental Board of Trustees shall have the authority to

(i) borrow funds and establish and exercise lines of credit, subject to the limit on borrowing authority set forth in Section 3.2(v);

(ii) hire and contract for personnel to perform tasks, studies, and activities consistent with the Developmental Stage purposes set forth in Article III as the Developmental Board of Trustees determines are appropriate to prepare for the Operational Stage, including, without limitation, continuing the development of the Seams Steering Group-Western Interconnection and its efforts relating to interregional planning, coordination, and market monitoring within the Western Interconnection;

(iii) take further action as the Board determines appropriate to prepare the Corporation for the possible transition to the Operational Stage, including, by way of illustration,

(a) securing funding to support the Corporation's work during the interim after the adoption of the Articles of Incorporation for the Operational Stage and the Operational Bylaws and the time when revenues for services rendered in the Operational Stage are collected, and

(b) preparing for and applying for tax-exempt status under state or federal law; and

(iv) engage in all other transactions necessary and useful in carrying out the Developmental Stage purposes set forth in Article III; provided, however, that all such tasks, studies, and activities shall be performed within the budget and borrowing limits of the Corporation.

7.2.3 Developmental Board Members. There shall be five (5) members of the Developmental Board of Trustees.

7.2.4 Developmental Board Term. Each Developmental Board Trustee's term of office shall extend only until either an Operational Board of Trustees is elected pursuant to the Operational Bylaws or the Corporation is dissolved, whichever comes first.

7.2.5 Adoption of Operational Bylaws. Subject to Section 12.2.3, if the Corporation, the Bonneville Power Administration, and at least two (2) investor-owned utilities with transmission systems contiguous with the Bonneville Power Administration's system execute Transmission Agreements within the time period specified in Section 13.2, then the Developmental Board of Trustees shall adopt the Operational Bylaws.

7.2.6 Amendment of Developmental Bylaws. The Developmental Board of Trustees may amend these Developmental Bylaws only by the affirmative vote of at least two-thirds (2/3) of the Trustees then in office and an affirmative vote of the Members, with the votes tabulated as provided in Section 5.14.6; provided, however, that adoption of the Operational Bylaws pursuant to Section 7.2.5 shall not be considered an amendment of these Developmental Bylaws; and provided, further, that any provisions of Sections 5.14 and 6.3.2 relating to the qualifications and voting rights of Members of any Member Class or Member Sub-Class may be amended only by the affirmative vote of a majority of the Members present and entitled to vote in such Member Class or Member Sub-Class at a duly held meeting of the Members in such Member Class or Member Sub-Class. All Members must receive at least thirty (30) days' notice of any vote on any proposed amendment of any of such provision.

7.2.7 Election of Developmental Board of Trustees.

(i) The members of the Developmental Board of Trustees shall be elected by the members of the MRC, in accordance with the provisions of this Article VII.

(ii) The members of the Developmental Board of Trustees, including nominees designated by the MRC to run unopposed, shall be elected by the affirmative vote of not fewer than twenty (20) members of the MRC unless there is a need for runoff elections as specified in Section 7.2.7(iii). In any election of Trustees, each member of the MRC shall be entitled

(a) to a number of votes equal to the number of vacancies to be filled in the election; and

(b) to vote for any nominee for Trustee.

Each MRC member shall be required to vote for as many nominees as there are vacancies to be filled in the election; provided, however, that no member of the MRC

(1) may cast more than one (1) vote for any given nominee;

(2) may vote for any number of nominees in excess of the number of Board vacancies to be filled in such election, or

(3) is required to vote for an unopposed nominee for whom the Member did not vote affirmatively to nominate.

Except with respect to the vote on a nominee designated to run unopposed by a Member that did not support the nomination, if any member of the MRC fails, in any election of Trustees, to cast each and all of the votes that such MRC member is entitled to cast, each vote that such MRC member has failed to cast shall be allocated at random, one by one, to another MRC member and cast by such MRC member in favor of a nominee of such member's choice for Trustee in such election. Except as permitted in connection with runoff elections as specified in Section 7.2.7(iii) below, the Trustees-elect shall comprise only those nominees receiving the highest vote (but not in any event fewer than twenty (20) votes) of the MRC members, up to such number of nominees as is equal to the number of Board vacancies to be filled in such election. If a vacancy cannot be filled because two (2) or more nominees receiving at least twenty (20) votes receive the same number of votes, a runoff election shall be held among such nominees and shall be repeated until the tie is broken. At any time during the identification of candidates for nomination or during the process of electing Trustees, the MRC may request that the executive search firm undertake a further search for additional candidates for any vacant position(s).

(iii) (a) If fewer than the requisite number of nominees receive twenty (20) or more votes in an election of Trustees, a first-round runoff election shall be held among the nominees receiving fewer than twenty (20) votes. The minimum number of MRC votes required to elect a Trustee in a first-round runoff election shall be twenty (20). The number of nominees for which the MRC may vote in a first-round runoff election (including supplemental nominees selected from any additional candidates requested from the executive search firm) may not exceed two (2) times the number of vacancies remaining after accounting for those nominees who received receive twenty (20) or more votes in the initial MRC vote. The number of nominees standing for election in a first-round runoff election shall be reduced, if necessary to comply with the preceding sentence, by removing from the first-round runoff election those nominees who receive the fewest votes in the initial MRC vote.

(b) If fewer than the requisite number of nominees receive twenty (20) or more votes in the first-round runoff election, a second-round runoff election shall be held among the nominees receiving fewer than twenty (20) votes. The minimum number of MRC votes required to elect a Trustee in a second-round runoff election shall be twenty (20). The number of nominees for which the MRC may vote in a second-round runoff election (including supplemental nominees selected from any additional candidates requested from the executive search firm) may not exceed two (2) times the number of vacancies remaining

after accounting for those nominees who receive twenty (20) or more votes in the first-round runoff election. The number of nominees standing for election in a second-round runoff election shall be reduced, if necessary to comply with the preceding sentence, by removing from further consideration those nominees who received the fewest votes in the first-round runoff election.

(c) If fewer than the requisite number of nominees receive twenty (20) or more votes in the second-round runoff election, there shall be a third-round runoff election to fill any remaining vacancies, and the minimum number of MRC votes required to elect a Trustee in a third-round runoff election shall be sixteen (16). The number of nominees for which the MRC may vote in a third-round runoff election (including supplemental nominees selected from any additional candidates requested from the executive search firm) may not exceed two (2) times the number of vacancies remaining after accounting for those nominees who received receive twenty (20) or more votes in the second-round runoff election. The number of nominees standing for election in a third-round runoff election shall be reduced, if necessary to comply with the preceding sentence, by removing from the third-round runoff election those nominees who receive the fewest votes in the second-round runoff election. If there are any vacancies remaining to be filled after a third-round runoff election, those vacancies shall be filled by the nominees who received the greatest number of votes in the third-round runoff election. The MRC chairperson shall draw lots to break any ties as necessary to carry out the provisions of Section 7.2.7 and its subsections.

(iv) Immediately upon completion of the election of Trustees, the Secretary of the Corporation shall provide official notice of the results of such election to the members of the MRC and the Members. Unless otherwise specified herein, the MRC shall determine the appropriate mechanisms and election procedures for elections of Trustees, based on time constraints and other relevant factors. Elections may be held by written ballot at a meeting, votes cast at a meeting, or such other procedures as the MRC designates.

7.3 Resignation or Removal of Developmental Board Trustees; Vacancies. A Trustee may resign from the Developmental Board of Trustees by providing written notice to the chairperson of the Board of Trustees or the President or the Secretary of the Corporation. A resignation of a Developmental Board Trustee shall be effective upon election of the resigning Trustee's replacement, unless the notice or the Developmental Board specifies an earlier time of effectiveness. The members of the MRC may remove any Developmental Board Trustee at any time, with or without cause, by the affirmative vote of not less than twenty (20) of the members of the MRC present at a duly held meeting of the MRC. The Developmental Board of Trustees may remove any Developmental Board Trustee at any time, but only for cause, if at least two-thirds (2/3) of the Developmental Board Trustees then in office vote in favor of such removal. If a vacancy occurs, the members of the MRC shall elect a replacement Developmental Board Trustee to fill the vacancy in accordance with the provisions of Section 7.2.7. A Developmental Board Trustee so elected shall serve for the unexpired term of his or her predecessor. For

purposes of this Section 7.3, "for cause" shall include, without limitation, a Developmental Board Trustee's willful misconduct or conviction of a felony, violation by a Developmental Board Trustee of the conflict-of-interest or disqualification provisions of these Developmental Bylaws, or a failure on the part of a Developmental Board Trustee, in any fiscal year, to attend more than one-half (1/2) of the meetings of the Developmental Board of Trustees held during such year.

7.4 Meetings of the Developmental Board of Trustees.

7.4.1 Quorum of Developmental Board of Trustees. A meeting is a gathering (in person or otherwise as permitted in this Article VII) of at least a quorum of Developmental Board Trustees as set forth in Section 7.8; provided, however, that the presence of a number of Developmental Board Trustees constituting a quorum in one place or at one event does not constitute a meeting if there is no deliberation or action taken regarding the Corporation's business. A quorum of Developmental Board Trustees may not take action (except by written consent as provided below) or deliberate regarding the Corporation's business except at a meeting and in compliance with procedural rules in this Article VII.

7.4.2 Scheduled Meetings of Developmental Board of Trustees. The Developmental Board of Trustees shall meet at least six (6) times each fiscal year at such dates, times, and places within the Geographic Area as the Developmental Board of Trustees shall determine; provided, however, that the Developmental Board of Trustees shall have its first meeting within thirty (30) days following its election. At the first meeting in the first quarter of each fiscal year, the Developmental Board of Trustees shall elect officers and elect a chairperson of the Developmental Board to preside over meetings. The regularly scheduled meetings of the Developmental Board of Trustees shall be established for each fiscal year in advance.

7.4.3 Regular and Special Meetings of the Developmental Board of Trustees. In addition to the regular meetings of the Developmental Board of Trustees, additional regularly scheduled or special meetings shall be held at such times as shall from time to time be fixed by the chairperson of the Developmental Board of Trustees. Special meetings of the Developmental Board of Trustees for any purpose or purposes may be called at any time by the President of the Corporation or by any two (2) Developmental Board Trustees.

7.4.4 Permitted Means of Trustee Meeting Participation. Developmental Board Trustees may participate in a meeting through the use of conference telephone, electronic video screen communication, or similar communications equipment, so long as all Trustees participating in such meeting can hear one another at the same time and arrangements are made to afford the public an opportunity to attend and observe any such meeting (with the exception of closed sessions held pursuant to Section 7.6). Participation in a meeting pursuant to this Section 7.4.4 shall constitute presence in person at such meeting.

7.4.5 Board Action by Consent in Writing. The Developmental Board of Trustees may, subject to any applicable law, take any action without a meeting, if a consent in writing, setting forth the action so taken, is signed by all of the Trustees then in office.

7.4.6 Board Meeting Minutes. The Secretary of the Corporation shall make public the minutes of each meeting of the Developmental Board of Trustees or committee thereof (with the exception of closed sessions held pursuant to Section 7.6), and each written consent of the Developmental Board of Trustees or any committee thereof, by posting the same on the Grid West Website and at the offices of the Corporation, or by any other reasonable means, within fifteen (15) days after the date on which the meeting was held or the signing of the consent was completed.

7.5 Notice of Developmental Board of Trustees Meetings.

7.5.1 Notice Requirements of Regular and Special Board Meetings. Notice of regularly scheduled and special meetings shall be given to the Developmental Board of Trustees not less than ten (10) days prior to the meeting if delivered by first-class mail or not less than five (5) days prior to the meeting if the notice is delivered personally, by telephone, by facsimile, or by electronic mail; provided, however, that notice of special meetings shall not be effective if sent solely by electronic mail.

7.5.2 Public Notice and Closed Sessions of the Board. Public notice of each meeting of the Developmental Board of Trustees (including meetings to be held in whole or in part in closed session pursuant to Section 7.6) shall be placed on the Grid West Website and posted at the offices of the Corporation at least ten (10) days prior to the meeting (or the soonest date practicable thereafter) if notice of such meeting has been delivered to the Trustees by first-class mail and at least five (5) days prior to the meeting (or the soonest date practicable thereafter) if notice of such meeting has been delivered to the Trustees personally, by telephone, by facsimile, or by electronic mail. Public notice of any adjournment and reconvening of any such meeting shall be placed on the Grid West Website and posted at the offices of the Corporation as soon as practicable after any such adjournment. Each such notice shall include an agenda that makes it clear which items are for purposes of discussion, which items are for purposes of taking action, and, to the extent practicable, which items are to be considered in a closed session; provided, however, that the failure of any item to be included on any such agenda shall not prevent action from being taken thereon at any meeting. If any changes are made to any such agenda prior to the meeting to which the agenda relates, the Secretary of the Corporation shall make reasonable efforts to provide public notice of any such changes as soon as practicable in advance of the meeting. In addition, notice of each meeting shall be sent by the Secretary of the Corporation, by first-class mail, telegram (charges prepaid), facsimile, or electronic mail, to each Member who so requests, each member of the MRC, and to each member of the public who so requests and who has provided the Secretary of the Corporation with complete information regarding such person's name and address; provided, however, that the failure of any such Member, member of the MRC, or member of the public to receive notice of any meeting of the Developmental Board of Trustees shall not under any circumstances affect the validity of such meeting or any action taken at such meeting. In the event of any emergency meeting of the Developmental Board of Trustees, the notice requirements of this Section 7.5.2 shall be suspended and the Secretary of the Corporation shall use whatever efforts the Secretary of the Corporation, in his or her sole discretion, deems reasonable, in light of all the facts and circumstances, to inform the Members and the public regarding the meeting and the matters scheduled to be considered at the meeting.

7.6 Open Board Meetings. Meetings of the Developmental Board of Trustees held pursuant to this Article VII shall generally be open to any and all Members and any and all members of the public, and except as provided below, any member of the public shall be entitled to attend and observe the proceedings of any regular or special meeting of the Developmental Board of Trustees. Subject to such procedural restrictions as may be reasonably imposed by the Developmental Board of Trustees, Members and members of the Regional Representatives Group shall have the right to address the Developmental Board of Trustees at all regular or special meetings of the Developmental Board. Notwithstanding the foregoing, the Developmental Board of Trustees may, at any time during any open meeting of the Developmental Board of Trustees, upon approval by the affirmative vote of not less than two-thirds (2/3) of the Trustees present at such meeting, adjourn the meeting and reconvene in a closed session for discussion of litigation or potential litigation, personnel matters, vendor or contractor selection, real estate transactions, commercially sensitive information, and other matters that are reasonably and in good faith determined by the Developmental Board of Trustees to be entitled to confidential treatment. Only Trustees and certain officers, employees, and agents of the Corporation, as designated by the Trustees, may be present during any closed session; provided, however, that to the extent deemed necessary by the chairperson of the Developmental Board, any other person or persons having business before the Developmental Board of Trustees that relates specifically to the matter or matters to be discussed during any portion of a closed session may be present during such portion of a closed session.

7.7 Waivers of Developmental Board Meeting Notice. The notice requirements contained in these Developmental Bylaws may be waived in writing by any Developmental Board Trustee with respect to himself or herself, either before or after the meeting. The attendance by any Developmental Board Trustee at a meeting shall constitute a waiver of notice of such meeting except when such Developmental Board Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. All waivers shall be made part of the minutes of the meetings.

7.8 Quorum of the Developmental Board of Trustees. A quorum for any meeting of the Developmental Board of Trustees shall be a majority of the Trustees then in office. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees, if any action taken is approved by the required number of Trustees, as specified in these Developmental Bylaws. A majority of the Trustees then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

7.9 Voting of the Developmental Board Trustees. Except where a greater vote is required by the Articles of Incorporation, applicable law, or these Developmental Bylaws, the affirmative vote of a majority of the Trustees then in office shall be the act of the Developmental Board of Trustees. Each Trustee shall have one (1) vote. Trustees may not vote by proxy.

7.10 Individuals Who Are Prohibited from Serving as Developmental Board Trustees.

7.10.1 Prohibited Individuals. Except as set forth in Section 7.10.2, no individual may be nominated for election to or become a member of the Developmental Board of Trustees, or at any time serve on the Developmental Board of Trustees, if such individual (or the spouse, the domestic partner, or any legal dependent of such individual)

(i) has a direct or indirect financial interest in (including the ownership of securities of) a Market Participant or Member (or any Affiliate of any of such Persons); provided, however, that such individual (or the spouse, the domestic partner, or any legal dependent of such individual) will be permitted to own securities of a Market Participant or Member (or any Affiliate of any such Persons) through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof);

(ii) is connected (or has been connected within one (1) year prior to the date of the meeting to nominate individuals for Trustee) as an owner, director, officer, employee, partner, principal, or member of a governing board or council, or in any similar capacity, to a Market Participant or Member (or any Affiliate of any of such Persons); provided, however, that an individual who served as an employee or an elected or appointed public official of a Participating Jurisdiction may be nominated; or

(iii) has a Related Person that is an officer, chief executive or general manager, director or trustee or member of a governing board or council, or occupies a position of similar capacity of a Market Participant or Member (or any Affiliate of any such Person); provided, however, that the individual may be nominated if the Related Person commits to retire or otherwise leaves the position that gives rise to the disqualification prior to the date of the first meeting of Trustees after the nominee is elected as a Trustee. The Trustee may serve only if the commitment is honored.

7.10.2 Exceptions Concerning Prohibited Individuals. An individual shall not be deemed to be in violation of the restrictions set forth in Section 7.10.1 and shall not be prohibited from serving as a Trustee merely because such individual (or the spouse, the domestic partner, or any legal dependent of such individual)

(i) is a residential retail consumer of electric energy; or

(ii) continues his or her pre-existing participation in a qualified defined benefits or defined contribution pension plan, a nonqualified deferred compensation or pension plan, or health benefits plan of a Market Participant or Member (or any Affiliate of any of such Persons) for purposes of receiving pension benefits and postemployment health benefits or remaining eligible to receive such benefits at a future time so long as the benefits to such individual under any such pension plan do not vary with the economic performance of such Market Participant or Member (or any Affiliate of any of such Persons) (other than the potential variance due to risk of bankruptcy) or the value of

any securities of any such Market Participant or Member (or any Affiliate of any of such Persons) held by such plan.

7.11 Continuing Restrictions on Former Developmental Board Trustees.

7.11.1 General Restrictions. Except as set forth in Section 7.11.2,

(i) during the period of one hundred eighty (180) consecutive days following the date on which an individual ceases to be a Developmental Board Trustee, neither such individual nor the spouse, the domestic partner, or any legal dependent of such individual may have or acquire a direct or indirect financial interest in a Market Participant or Member (or any Affiliate of any of such Persons); provided, however, that such individual (or the spouse, the domestic partner, or any legal dependent of such individual) will be permitted to own securities of a Market Participant or Member (or any Affiliate of any of such Persons) through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segment thereof);

(ii) during the period of three hundred sixty-five (365) consecutive days following the date on which an individual ceases to be a Developmental Board Trustee, neither such individual nor the spouse, the domestic partner, or any legal dependent of such individual

(a) may be or become connected as an owner (including through ownership or control of five percent (5%) or more of outstanding shares), director, officer, employee, partner, principal, or consultant, or in any similar capacity, to a Market Participant or Member (or any Affiliate of any of such Persons), or

(b) may receive in such person's individual capacity an amount in excess of \$10,000 (U.S.) (exclusive of retirement income or benefits) in the aggregate from the Corporation, any Market Participant, or any Member (or any Affiliate of any of such Persons) as rent or payments for materials, products, or services;

(iii) during the period of three hundred sixty-five (365) consecutive days following the date on which an individual ceases to be a Developmental Board Trustee, neither such individuals nor any Related Person of such individuals may receive an amount in excess of \$10,000 (U.S.) (exclusive of retirement income or benefits) from relationships with other entities that receive substantial amounts of income or other benefits from the Corporation, any Market Participant, or any Member (or any Affiliate of such Persons). The Developmental Board of Trustees shall have the discretion to determine from time to time in meetings open to the public what shall constitute substantial amounts of income or other benefits for purposes of this restriction; and

(iv) neither such individual nor the spouse, the domestic partner, or any legal dependent of such individual may at any time accept any gift from any Market Participant or Member that is offered as a consequence of service as a Developmental Board Trustee, subject to any exceptions contained in the terms of any applicable conduct rules.

7.11.2 Exceptions Concerning Continuing Restrictions. An individual shall not be deemed to be in violation of the restrictions set forth in Section 7.11.1 merely because such individual (or the spouse, the domestic partner, or any legal dependent of such individual)

(i) is a residential retail consumer of electric energy; or

(ii) continues his or her pre-existing participation in a qualified defined benefits or defined contribution pension plan, nonqualified deferred compensation or pension plan, or health benefits plan of a Market Participant or Member (or any Affiliate of any of such Persons) for purposes of receiving pension benefits and postemployment health benefits or remaining eligible to receive such benefits at a future time so long as the benefits to such individual under any such pension plan do not vary with the economic performance of such Market Participant or Member (or any Affiliate of any of such Persons) (other than the potential variance due to risk of bankruptcy) or the value of any securities of any such Market Participant or Member (or any Affiliate of any of such Persons) held by such plan.

7.12 Standard of Care.

7.12.1 General Standard for Decisions. A Developmental Board Trustee shall perform the duties of a Trustee, including duties as a member of any committee of the Developmental Board of Trustees on which the Trustee may serve, in good faith, in a manner that such Trustee believes to be in the best interests of the Corporation in achieving the purposes set forth in Article III, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

7.12.2 Reliance on Information In performing the duties of Trustee, a Developmental Board Trustee shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by

(i) any advisory committee established by the Developmental Board of Trustees pursuant to Section 8.2 of these Developmental Bylaws;

(ii) one (1) or more officers or employees of the Corporation whom the Trustee reasonably believes to be reliable and competent in the matter presented;

(iii) legal counsel, public accountants, or other persons as to matters that the Trustee reasonably believes are within such person's professional or expert competence; or

(iv) a committee of the Developmental Board of Trustees upon which the Trustee does not serve, as to matters within such committee's or person's designated authority, which committee or person the Trustee believes to merit confidence; so long as, in any such case, the Trustee acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

7.12.3 Conduct Rules. The Developmental Board of Trustees shall maintain Trustees conduct rules. In addition, the Developmental Board of Trustees shall ensure, to the extent practicable, that each Trustee complies with the Corporation's Trustees conduct rules, which conduct rules may be changed from time to time by the Developmental Board of Trustees. The initial Trustees conduct rules for the Developmental Board of Trustees are attached to these Developmental Bylaws as Exhibit B2.

7.12.4 Independence from Market Participants. The Developmental Board of Trustees shall develop and implement policies, designed to ensure independence from Market Participants, regarding the ownership of securities of suppliers of the Corporation or of other financial interests relating to the Corporation, by Trustees, officers, and employees of the Corporation (including Related Persons of such Developmental Board Trustees, officers, and employees). Each Trustee, officer, and other employee of the Corporation as may be designated pursuant to policies established by the Developmental Board of Trustees shall file an annual compliance affidavit with the Developmental Board of Trustees.

7.13 Prohibition Against Gifts and Loans to Developmental Board Trustees. The Corporation shall not make any gift or loan of money or property to or guarantee the obligation of any Trustee or Related Person of a Developmental Board Trustee; provided, however, that the Corporation may advance money to a Developmental Board Trustee for expenses reasonably anticipated to be incurred in performance of the duties of such Trustee so long as such individual would be entitled to reimbursement for such expenses absent such advance.

7.14 Inspection Rights. Every Developmental Board Trustee shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties, of the Corporation. No Developmental Board Trustee shall use or disseminate any information (other than any information regarding a violation of tariffs or laws) obtained as a result of any such inspection, or otherwise in his or her capacity as a Trustee, for his or her own personal gain or to the detriment of the Corporation.

7.15 Compensation of Developmental Board Members.

7.15.1 Authorized Base Compensation and Additional Compensation. Developmental Board Trustees shall receive base compensation in the amount of \$30,000 (U.S.) per year and additional compensation in the amount of \$1,000 (U.S.) per day for attendance at each meeting of the Developmental Board of Trustees or committee thereof, and \$500 (U.S.) per day for any other meetings related to the business of the Corporation that the Developmental Board of Trustees determines a Trustee should attend, to obtain the widest possible input into the

decisions of the Developmental Board of Trustees and to avoid hardship on the part of such Trustees; provided, however, that the total compensation for each Trustee shall not exceed \$120,000 (U.S.) in any calendar year; and, provided, further, that the Developmental Board of Trustees may designate one (1) Trustee to serve as the Corporation's Chief Executive Officer (or in a similar capacity). If the Developmental Board of Trustees designates a Trustee to serve as the Corporation's Chief Executive Officer (or in a similar capacity), the Developmental Board of Trustees may prospectively provide for that Trustee to receive additional compensation and exceed the \$120,000 (U.S.) limit otherwise applicable under this Section 7.15.1. Any such proposed designation or increase in the Trustee's total authorized compensation must be approved at a meeting noticed pursuant to Section 7.5, and any decision to so designate or increase compensation must be promptly disclosed to the Corporation's Members.

7.15.2 Reimbursement of Expenses. Developmental Board Trustees shall also be entitled to receive reimbursement for reasonable and necessary travel and other actual expenses incurred in performing duties of their offices and in attending meetings of the Developmental Board of Trustees and meetings of committees of the Developmental Board of Trustees or advisory committees.

7.15.3 Prohibition Against Trustees Being an Officer, Employee, or Consultant. While serving as a Trustee, a Developmental Board Trustee shall not be an officer or employee of the Corporation, or a consultant to the Corporation (except as permitted in Section 7.15.1 with respect to the Chief Executive Officer).

## ARTICLE VIII

### COMMITTEES OF THE DEVELOPMENTAL BOARD OF TRUSTEES

8.1 Committees of Trustees. The Developmental Board of Trustees may, by resolution adopted by a majority of the Trustees then in office, designate one (1) or more committees, each consisting of two (2) or more Trustees, to serve at the pleasure of the Developmental Board of Trustees. Appointments to such committees may be made at any meeting of the Developmental Board of Trustees by a majority vote of the Trustees then in office. Each committee shall have such authority of the Developmental Board of Trustees as is delegated by resolution of the Developmental Board, except that no committee, regardless of the Developmental Board of Trustees resolution, may

- (i) elect, appoint, or remove any member of such committee, any Trustee, or any officer of the Corporation;
- (ii) appoint any other committees of the Developmental Board of Trustees or the members of any such committees;
- (iii) fix compensation of Trustees for serving on the Interim or Developmental Board of Trustees or any committee;

- (iv) amend, alter, or repeal these Developmental Bylaws, or adopt new bylaws, or amend the Articles of Incorporation;
- (v) amend, alter, or repeal any resolution of the Interim or Developmental Board of Trustees;
- (vi) adopt a plan of merger or consolidation;
- (vii) authorize or cause the Corporation to enter into any binding contract or other legal obligation or incur any liability;
- (viii) authorize the sale, lease, exchange, mortgage, or pledge of all or substantially all of the property or the assets of the Corporation; or
- (ix) authorize the voluntary dissolution of the Corporation or revoke proceedings therefor, or adopt a plan for the distribution of the assets of the Corporation on dissolution.

8.2 Advisory Committees. The Developmental Board of Trustees may appoint advisory committee from time to time at its discretion. Advisory committee membership may consist of both Trustees and non-Trustees or non-Trustees only. Advisory committees have no authority to act for the Corporation but shall report their findings and recommendations to the Developmental Board of Trustees.

8.2.1 Consideration of Tariff Committee. The Developmental Board of Trustees shall consider appointing a Tariff Committee to advise the Developmental Board of Trustees on the development or review of the Corporation's tariff(s). Before determining whether to appoint a Tariff Committee the Developmental Board of Trustees shall consider the status of tariff development efforts, the advice of the Regional Representatives Group, and other considerations the Trustees deem relevant.

8.2.2 Tariff Committee. If the Developmental Board of Trustees establishes a Tariff Committee, it shall consist of up to fifteen (15) representatives of Members appointed by the Developmental Board of Trustees and serve until the completion of the Developmental Stage. Developmental Board Trustees may, but are not required to, serve on the Committee. The Developmental Board of Trustees shall endeavor to select representatives from each of the Member Classes to serve on the Tariff Committee, and shall endeavor to select individuals who collectively possess an appropriate spectrum of expertise with respect to defining the terms and conditions for electric transmission services and participation in related markets.

8.3 Meetings. Regular and special meetings of committees of the Developmental Board of Trustees and any advisory committees shall be governed by, and the procedures relating to such meetings and actions taken by such committees at such meetings or by written consent shall be carried out in accordance with, the provisions of Sections 7.4 through 7.9 concerning meetings of the Developmental Board of Trustees. For the purposes of the

application of Article VII to the meetings of committees of the Developmental Board of Trustees or advisory committees, references in Article VII to the Developmental Board of Trustees shall be read as references to the applicable committee of the Developmental Board of Trustees or to the applicable advisory committee. Minutes of each meeting of any committee (with the exception of closed sessions held pursuant to Section 7.6) shall be kept and filed with the corporate records. The Developmental Board of Trustees may adopt rules for the governance of any committee not inconsistent with the provisions of these Developmental Bylaws.

## ARTICLE IX

### OFFICERS AND STAFF

9.1 Officers. The officers of the Corporation shall be a President, one (1) or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Interim or Developmental Board of Trustees may appoint. The same person may hold two (2) or more offices; provided, however, that the same person may not hold the offices of President and Secretary; and, provided, further, that the same person may not hold the offices of President and Treasurer.

9.2 Appointment. The Interim Board of Trustees may appoint officers of the Corporation during the time the Interim Board of Trustees is in office, and the Developmental Board of Trustees may appoint officer(s) of the Corporation during the time the Developmental Board of Trustees is in office. Officers may be appointed at any meeting of the Interim or Developmental Board of Trustees, and the terms of service of the officers so appointed shall be as specified by the Interim or Developmental Board of Trustees.

9.3 Removal. Subject to the rights, if any, of the officer under any contract of employment, the Interim or Developmental Board of Trustees may remove any of the Corporation whenever, in the Interim or Developmental Board's judgment, removal will serve the best interests of the Corporation.

9.4 Resignation. Any officer may resign at any time by giving written notice to the Secretary of the Corporation. Any resignation shall take effect on the date of the receipt of that notice or at any later time specified by that notice, and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract of employment with the officer.

9.5 President. The President shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Interim or Developmental Board of Trustees. He or she shall have such additional powers and duties as may be prescribed by the Interim or Developmental Board of Trustees.

9.6 Vice President. During the absence or disability of the President, the Vice President (or if there is more than one Vice President, the Vice Presidents in the order designated by the Interim or Developmental Board of Trustees) shall exercise all functions of the President,

except as limited by resolution of the Interim or Developmental Board of Trustees. Each Vice President shall have such powers and discharge such duties as may be assigned from time to time to such Vice President by the President or by the Interim or Developmental Board of Trustees.

9.7 Secretary. The Secretary of the Corporation shall serve notice of and act as Secretary of the Corporation at all meetings of the Interim or Developmental Board of Trustees, shall administer the meetings of Members as provided in Articles V and VI, shall record the proceedings of all meetings in the minute books, and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Interim or Developmental Board of Trustees. The Secretary of the Corporation shall have such additional powers and duties as shall be prescribed by the Interim or Developmental Board of Trustees.

9.8 Treasurer. The Treasurer of the Corporation shall have the care and custody of the money, funds, and securities of the Corporation; shall account for the same; and shall have and exercise, under the supervision of the Interim or Developmental Board of Trustees, all the powers and duties commonly incident to this office. The Treasurer shall prepare and maintain the books, accounts and financial statements, financial records, and financial reports of the Corporation consistent with generally accepted accounting principles.

9.9 Additional Officers. The Interim or Developmental Board of Trustees may appoint one (1) or more additional officers to perform such duties and have such powers as the Interim or Developmental Board of Trustees shall designate.

9.10 Compensation; Prohibition Against Loans.

9.10.1 Compensation Determined by the Board. Compensation of the officers shall be determined by the Interim or Developmental Board of Trustees.

9.10.2 Prohibited Loans; Permitted Advances. The Corporation shall not make any loan of money or property to or guarantee the obligation of any officer or Related Person of an officer; provided, however, that the Corporation may advance money to an officer for expenses reasonably anticipated to be incurred in performance of the duties of such officer so long as the officer would be entitled to reimbursement for such expenses absent such advance.

9.11 Execution of Instruments. The President shall have the authority to execute legal instruments on behalf of the Corporation, subject to any restrictions or limitations that the Interim or Developmental Board of Trustees may impose. The President's authority to execute legal instruments on behalf of the Corporation may be delegated by the President to other officers and employees of the Corporation on a general or limited basis with the prior written approval of the Interim or Developmental Board of Trustees.

9.12 Staffing. Officers of the Corporation may, within such budgetary authority and subject to such other restrictions and requirements as these Developmental Bylaws for the Interim or Developmental Board of Trustees establish from time to time, hire or contract with such staff as is necessary to fulfill the purposes of the Corporation.

9.13 Conduct Rules. The Developmental Board of Trustees shall ensure that the officers, employees, and substantially full-time consultants and contractors of the Corporation, and any transmission owner or operator personnel or other individuals performing discretionary functions for or on behalf of the Corporation, comply with the employees conduct rules. The employees conduct rules may be amended from time to time. The initial employees conduct rules are attached to these Developmental Bylaws as Exhibit A. All contracts with non-full-time contractors shall include appropriate conduct rules, as determined by the Developmental Board of Trustees from time to time, taking into account the nature of the work of such contractor and the value of such contractor's work to the Corporation. The Developmental Board of Trustees may in its discretion include in the employees conduct rules specific postemployment restrictions on former employees, including restrictions on involvement in any matter in which the former employee was directly involved while an employee and restrictions for a limited period on any appearances before the Corporation in a representative capacity.

## ARTICLE X

### RECORDS

#### 10.1 Records Available for Inspection

10.1.1 Records. The Corporation shall keep or cause to be kept at its principal office the following records:

- (i) the Articles of Incorporation and all amendments and restatements thereof and a copy of all documents qualifying the Corporation to do business within a state;
- (ii) the Corporation's bylaws and all amendments thereof, duly certified by the Secretary of the Corporation;
- (iii) a record of Members, including the name, address, and Member Class of each Member;
- (iv) correct and adequate records of accounts and finances;
- (v) a record of officers' and Trustees' names and addresses; and
- (vi) minutes of all meetings of the Members and of all meetings of the Developmental Board of Trustees and each committee thereof (other than closed sessions held pursuant to the applicable provisions of these Developmental Bylaws).

10.1.2 Member Inspection of Records. The records kept pursuant to this Section 10.1 shall be open at any reasonable time to inspection by any Member. Such records may be written, or electronic if capable of being converted to writing. The Corporation may impose reasonable charges for any copies of the Corporation's records that a Member requests in connection with exercising its inspection rights under this Section 10.1.2.

10.2 Financial Records.

10.2.1 Annual Financial Statements. As soon as reasonably practical after the close of the fiscal year, annual financial statements of the Corporation for the Developmental Stage shall be prepared in accordance with generally accepted accounting principles. The financial statements shall contain in appropriate detail the following:

- (i) the assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;
- (ii) the principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (iii) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (iv) the expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year;
- (v) any transaction or series of related transactions during the previous fiscal year involving \$10,000 (U.S.) or more to which the Corporation was a party and in which any Trustees or officers of the Corporation had or have a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction, and, when practical, the amount of such interest; and
- (vi) the amount and circumstances of any indemnification or advances aggregating more than \$10,000 (U.S.) paid during the fiscal year.

10.2.2 Accountant's Review of Financial Statements. The Developmental Board of Trustees shall cause the Developmental Stage financial statements of the Corporation to be reviewed by an independent accountant on at least an annual basis, with the independent accountant's review results to be summarized in a formal letter to the Developmental Board of Trustees.

10.2.3 Reports Concerning Financial Status. The Developmental Board of Trustees may, at its discretion, cause reports concerning the Corporation's financial status during the Developmental Stage to be prepared and delivered to the Members from time to time (and, if the Board deems it appropriate, to the general public as well). The Developmental Board of Trustees may require that reports concerning the Corporation's financial status during the Developmental Stage be made available to the general public subject to a requirement that requesting parties pay the reasonable costs of providing the reports.

10.3 Records Retention. The Developmental Board of Trustees shall cause to be developed and implemented a records retention program complying with all applicable legal requirements.

## ARTICLE XI

### INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS

11.1 Liability of Trustees; Indemnification Rights of Members of the Developmental Board of Trustees and Certain Officers.

11.1.1 Limits on Liability of Trustees. Trustees shall be liable to the Corporation only for the following:

- (i) acts or omissions that involve intentional misconduct by the Trustee;
- (ii) knowing violation of the law by the Trustee;
- (iii) conduct violating RCW 23B.08.310; and
- (iv) any transaction from which the Trustee personally receives a benefit in money, property, or services to which the Trustee is not legally entitled.

If the Washington Business Corporation Act, as applied to nonprofit corporations, is amended to authorize corporate action further eliminating or limiting the personal liability of Trustees, then the liability of a Trustee shall be deemed eliminated or limited to the fullest extent permitted by the Washington Business Corporation Act, as so amended.

11.1.2 Indemnification of Trustees. The Corporation shall indemnify the members of the Developmental Board of Trustees and any officers to the full extent permitted by applicable law as then in effect against liability arising out of a Proceeding to which such individual was made a party because the individual is or was a Trustee or officer of the Corporation. The Corporation shall advance expenses (including attorneys' fees) incurred by such persons who are parties to a Proceeding in advance of final disposition of the Proceeding, as provided herein. The Corporation may not indemnify members of the Interim Board.

11.2 Indemnification of Employees and Agents. The Corporation shall have the power, to the fullest extent and in the manner permitted by applicable law, to indemnify and advance expenses (including attorneys' fees) to each of its employees and agents against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any Proceeding arising by reason of the fact that such person is or was an employee or agent of the Corporation.

11.3 Procedure for Seeking Indemnification or Advancement of Expenses.

11.3.1 Notification and Defense of Claim.

(i) Indemnitee shall promptly notify the Secretary of the Corporation in writing of any Proceeding for which indemnification could be sought under this Article XI. In addition, Indemnitee shall give the Corporation such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(ii) With respect to any such Proceeding as to which Indemnitee has so notified the Secretary of the Corporation:

(a) the Corporation will be entitled to participate therein at its own expense; and

(b) except as otherwise provided below, to the extent that it may wish, the Corporation, jointly with any other indemnifying party similarly notified, will be entitled to assume the defense thereof, with counsel satisfactory to Indemnitee. Indemnitee's consent to such counsel may not be unreasonably withheld.

(iii) After notice from the Corporation to Indemnitee of its election to assume the defense, the Corporation will not be liable to Indemnitee under this Article XI for any legal or other expenses (including attorneys' fees) subsequently incurred by Indemnitee in connection with such defense. However, Indemnitee shall continue to have the right to employ his or her counsel in such Proceeding, at Indemnitee's expense, and if

(a) the employment of counsel by Indemnitee has been authorized by the Corporation;

(b) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of such defense;

(c) the Corporation shall not in fact have employed counsel to assume the defense of such Proceeding,

then the fees and expenses (including attorneys' fees) of Indemnitee's counsel shall be at the expense of the Corporation; and

(iv) The Corporation shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Corporation or as to which Indemnitee shall reasonably have made the conclusion that a conflict of interest may exist between the Corporation and Indemnitee in the conduct of the defense.

11.3.2 Information to Be Submitted and Method of Determination and Authorization of Indemnification

(i) For the purpose of pursuing rights to indemnification under this Article XI, Indemnitee shall submit to the Developmental Board a sworn statement requesting indemnification and reasonable evidence of all amounts for which such indemnification is requested (together, the sworn statement and the evidence constitute an "Indemnification Statement").

(ii) Submission of an Indemnification Statement to the Developmental Board shall create a presumption that Indemnitee is entitled to indemnification hereunder, and the Corporation shall, within sixty (60) days thereafter, make the payments requested in the Indemnification Statement to or for the benefit of Indemnitee, unless

(a) within such sixty- (60-) day period it shall be determined by the Corporation that Indemnitee is not entitled to indemnification under this Article XI;

(b) such vote shall be based upon clear and convincing evidence (sufficient to rebut the foregoing presumption); and

(c) Indemnitee shall receive notice in writing of such determination, which notice shall disclose with particularity the evidence upon which the determination is based.

(iii) At the election of the President of the Corporation, the foregoing determination may be made by either

(a) a committee chosen by written consent of a majority of the Trustees of the Corporation, and consisting solely of two (2) or more Trustees not at the time parties to the Proceeding; or

(b) as provided by RCW 23B.08.550, as amended.

(iv) Any determination that Indemnitee is not entitled to indemnification, and any failure to make the payments requested in the Indemnification Statement, shall be subject to judicial review by any court of competent jurisdiction.

11.3.3 Special Procedure Regarding Advance for Expenses.

(i) An Indemnitee seeking payment of expenses (including attorneys' fees) in advance of a final disposition of the Proceeding must furnish the Corporation, as part of the Indemnification Statement

(a) a written affirmation of Indemnitee's good-faith belief that Indemnitee has met the standard of conduct required to be eligible for indemnification; and

(b) a written undertaking, constituting an unlimited general obligation of Indemnitee, to repay the advance if it is ultimately determined that Indemnitee did not meet the required standard of conduct.

(ii) If the Corporation determines that indemnification is authorized, Indemnitee's request for advance of expenses (including attorneys' fees) shall be granted.

11.3.4 Settlement. The Corporation is not liable to indemnify Indemnitee for any amounts paid in settlement of any Proceeding without the Corporation's written consent. The Corporation shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee may unreasonably withhold its consent to a proposed settlement.

#### 11.4 Contract and Related Rights.

11.4.1 Contract Rights. The right of an Indemnitee to indemnification and advancement of expenses (including attorneys' fees) is a contract right upon which Indemnitee shall be presumed to have relied in determining to serve or to continue to serve in his or her capacity with the Corporation. Such right shall continue as long as Indemnitee shall be subject to any possible Proceeding. Any amendment to or repeal of this Article XI shall not adversely affect any right or protection of an Indemnitee with respect to any acts or omissions of such Indemnitee occurring prior to such amendment or repeal.

#### 11.4.2 Optional Insurance, Contracts, and Funding. The Corporation may

(i) maintain insurance, at its expense, to protect itself and any Indemnitee against any liability, whether or not the Corporation would have power to indemnify the individual against the same liability under RCW 23B.08.510 or .520, or a successor statute;

(ii) enter into contracts with any Indemnitee in furtherance of this Article XI and consistent with applicable law; and

(iii) create a trust fund, grant a security interest, or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article XI.

11.4.3 Severability. If any provision or application of this Article XI shall be invalid or unenforceable, the remainder of this Article XI and its remaining applications shall not be affected thereby, and shall continue in full force and effect.

11.4.4 Right of Indemnatee to Bring Suit. If

(i) a claim under this Article XI for indemnification is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, or

(ii) a claim under this Article XI for advancement of expenses (including attorneys' fees) is not paid in full by the Corporation within twenty (20) days after a written claim has been received by the Corporation,

then Indemnatee may, but need not, at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the extent successful in whole or in part, Indemnatee shall be entitled to also be paid the expense (to be proportionately prorated if Indemnatee is only partially successful) of prosecuting such claim.

11.4.5 No Presumption. Neither

(i) the failure of the Corporation (including its Developmental Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such Proceeding that indemnification or reimbursement or advancement of expenses (including attorneys' fees) to Indemnatee is proper in the circumstances, nor

(ii) an actual determination by the Corporation (including its Developmental Board of Trustees or independent legal counsel) that Indemnatee is not entitled to indemnification or to the reimbursement or advancement of expenses (including attorneys' fees)

shall be a defense to the Proceeding or create a presumption that Indemnatee is not so entitled.

11.5 Exceptions to Corporation's Obligations. Any other provision herein to the contrary notwithstanding, the Corporation shall not be obligated pursuant to the terms of these Developmental Bylaws to indemnify or advance expenses (including attorneys' fees) to Indemnatee with respect to any Proceeding involving claims:

(i) initiated or brought voluntarily by Indemnatee and not by way of defense, except with respect to Proceedings brought to establish or enforce a right to indemnification under these Developmental Bylaws or any other statute or law or as otherwise required under the statute, but such indemnification or advancement of expenses (including attorneys' fees) may be provided by the Corporation in specific cases if the Board of Trustees finds it to be appropriate;

(ii) instituted by Indemnatee to enforce or interpret this Article XI, if a court of competent jurisdiction determines that each of the material assertions made by Indemnatee in such Proceeding was not made in good faith or was frivolous;

(iii) for which any of the expenses (including attorneys' fees) or liabilities for which indemnification is being sought have been paid directly to Indemnatee by an insurance carrier under a policy of officers' and trustees' liability insurance maintained by the Corporation; and

(iv) with respect to which the Corporation is prohibited by applicable law as then in effect from paying such indemnification or advancement of expenses (including attorneys' fees). For example, the Corporation and Indemnatee acknowledge that federal legislation prohibits indemnification for certain ERISA violations.

## ARTICLE XII

### MISCELLANEOUS

12.1 Meetings Related to Negotiation of Transmission Agreements. Except for meetings at which attendance is otherwise limited by the Developmental Board of Trustees for good cause, including, without limitation, a need to discuss legally sensitive matters, the Developmental Board of Trustees shall ensure that in-person meetings scheduled by the Corporation to which transmission owners and operators in the Geographic Area are invited and are intended to discuss and negotiate provisions of the Transmission Agreements to be offered to such transmission owners are open to Members and to those transmission system customers with contracts for services from transmission owners or operators within the Geographic Area. The Developmental Board of Trustees shall state the basis for its finding of good cause either in the agenda for the meeting or on the Grid West Website promptly following the meeting. Periodically during such meetings, the Members and qualified transmission system customers shall be given a timely opportunity to voice their opinions on the topics being discussed at such meetings. Nothing in this Section 12.1 shall prohibit informal contacts (such as telephone communications) between transmission owners and operators and Corporation representatives necessary to facilitate the negotiating process.

#### 12.2 Member Vote Related to Adoption of Operational Bylaws.

12.2.1 Operational Bylaws Business Plan Prior to the Member vote described below, the Board of Trustees shall develop and distribute to the Members a business plan to be recommended to the Operational Board for provision of the services anticipated to be offered within the first two (2) years of the Operational Stage in a manner that is cost-effective and controls costs, and includes a cost estimate for providing such services and consideration of contracting for services to carry out the Corporation's responsibilities.

12.2.2 Member Right to Vote on Adoption of Operational Bylaws. The Board of Trustees shall not take any action to adopt the Operational Bylaws without first conducting a Member vote on whether the Board of Trustees should adopt the Operational Bylaws. Such Member vote shall be scheduled for a date selected by the Board of Trustees but only after it determines that

(i) a risk-and-rewards analysis of commencing commercial operations of Grid West has been completed;

(ii) at least two (2) investor-owned utilities have indicated that the proposed Transmission Agreement offered by Grid West has been or will be submitted to the appropriate regulatory authority for any necessary review and approval; and

(iii) the Bonneville Power Administration has indicated that the proposed Transmission Agreement offered by Grid West will be included in the proposal made available for public review and comment prior to the Administrator's issuing a Record of Decision on whether to execute the Transmission Agreement.

12.2.3 Conduct of Member Vote. If a majority of the Member voting power votes to approve adoption of the Operational Bylaws as provided in Section 5.14.8, the Board of Trustees must adopt the Operational Bylaws to supersede these Developmental Bylaws without further Member action upon satisfaction of the requirements of Section 7.2.5. The Member vote required by Section 12.2.2 shall be subject to all applicable requirements of these Developmental Bylaws concerning providing notice of and conducting Member meetings (including, without limitation, Sections 5.13 and 5.14). If a majority of the Member voting power does not vote to approve adoption of the Operational Bylaws as provided in Section 5.14.8, the Board of Trustees must reorganize as a nonmembership, nonprofit corporation controlled by those parties that are Members of the Major Transmitting Utilities Member Class at the time of the reorganization.

12.3 Fiscal Year. The fiscal year of the Corporation shall be established at the discretion of the Board of Trustees.

12.4 Corporation Seal. The Corporation may have a seal as specified by resolution of the Interim or Developmental Board of Trustees. Such seal may be affixed to any and all corporate instruments, but failure to affix it shall not affect the validity of any instrument.

12.5 Notices. Except as and to the extent otherwise provided in these Developmental Bylaws, any notice required or permitted to be given under or pursuant to these Developmental Bylaws shall be required to be delivered to the intended recipient party either by first-class mail, in person, by facsimile equipment providing written confirmation of completed transmission, or by electronic mail at such party's address, facsimile number, or electronic mail address provided to the Secretary of the Corporation in accordance with the requirements of these Developmental Bylaws. Notices delivered by mail shall be effective when deposited in the U.S. or Canadian mail, with first-class postage thereon prepaid. Notices delivered in person shall be effective upon delivery, and notices sent by facsimile or electronic mail shall be effective upon completion of successful transmission. Any Person may change the address to which notices should be sent by giving notice of such change to the Secretary of the Corporation in accordance with the requirements of this Section 12.5.

12.6 Distribution of Net Assets upon Dissolution. Upon the dissolution or winding up of the Corporation, the Trustees shall, after paying, satisfying, discharging, or making adequate provision for payment of all of the liabilities and obligations of the Corporation, and subject to

satisfaction of all applicable requirements of RCW 24.03.225 relating to dissolution, distribute all the remaining assets of the Corporation in accordance with the Articles of Incorporation.

## ARTICLE XIII

### SUNSET AND TERMINATION

13.1 Deadline to Offer Transmission Agreements. If the Developmental Board of Trustees has not offered Transmission Agreements to transmission owners and operators in the Geographic Area within twelve (12) months of the first meeting of the Developmental Board of Trustees, the Developmental Board of Trustees shall adopt a resolution to dissolve the Corporation and shall submit the resolution to a vote of the Members in accordance with Section 5.14.5. Unless the Members vote to override the Developmental Board of Trustees resolution to dissolve the Corporation as provided in Section 5.14.5, the Developmental Board of Trustees shall promptly proceed with dissolving the Corporation.

13.2 Deadline for Execution of Transmission Agreements. If the Bonneville Power Administration and at least two (2) investor-owned utilities with transmission systems contiguous with the Bonneville Power Administration's system in the Geographic Area do not execute Transmission Agreements within twelve (12) months of their offer, the Developmental Board of Trustees shall adopt a resolution to dissolve the Corporation and shall submit the resolution to a vote of the Members in accordance with Section 5.14.5. Unless the Members vote to override the Developmental Board of Trustees resolution to dissolve the Corporation as provided in Section 5.14.5, the Developmental Board of Trustees shall promptly proceed with dissolving the Corporation.

13.3 Board Discretion to Dissolve Corporation for Lack of Progress. If the Developmental Board of Trustees determines that sufficient progress cannot be made toward offering Transmission Agreements reasonably expected to be accepted by transmission owners and operators in the Geographic Area by the deadline specified in Section 13.1, the Developmental Board of Trustees may vote to dissolve the Corporation by an affirmative vote of not less than two-thirds (2/3) of the Trustees then in office. If the Developmental Board of Trustees resolves to dissolve the Corporation pursuant to this Section 13.3, the Developmental Board of Trustees must submit the matter to a vote of the Members in accordance with Section 5.14.5. Unless the Members vote to override the dissolution as provided in Section 5.14.5, the Developmental Board of Trustees may proceed with dissolution following the Member vote.

13.4 Actions Triggering Regulatory Jurisdiction Voided. Notwithstanding any other provision of these Developmental Bylaws, should the Corporation take any action during its Developmental Stage on the basis of which any regulatory entity with jurisdiction over electric utility facilities or services asserts jurisdiction over the Corporation or its activities, the Corporation's action shall be void *ab initio*. If, after the action is deemed void pursuant to the preceding sentence, the regulatory entity exercises jurisdiction over the Corporation during the Developmental Stage, the Board of Trustees shall immediately dissolve the Corporation (without submitting the matter to any Member vote).

*December 10, 2004*

13.5 Dissolutions Pursuant to Sections 13.1 Through 13.4. If the Board of Trustees dissolves the Corporation pursuant to Sections 13.1 through 13.4, the Board of Trustees shall, before dissolving the Corporation, assign any debt owed under the Funding Agreement and funding provided to the Corporation under predecessor agreements to an entity designated by at least a majority of the creditors.

*December 10, 2004*

**CERTIFICATION**

The undersigned hereby certifies that the foregoing Developmental Bylaws of Grid West were approved by a favorable vote of the Board of Trustees of the Corporation on the 9th day of December, 2004.

Dated this 10th day of December, 2004.

By:

*Sharon Helms*

Sharon Helms

Secretary of the Corporation

## EXHIBIT A

### EMPLOYEES CONDUCT RULES

The Conduct Rules for officers, employees, and substantially full-time consultants and contractors of the Corporation are as follows:

I. DEFINITIONS. For purposes of these Conduct Rules, the following terms and definitions shall apply:

A. "Corporate Personnel" means each and all of the officers, employees, and substantially full-time consultants and contractors of the Corporation.

B. "Developmental Board of Trustees" means the Board of Trustees of the Corporation during the Corporation's Developmental Stage.

C. "Person" means an individual, corporation, cooperative corporation, municipal corporation, quasi-municipal corporation, limited liability company, mutual association, partnership, limited partnership, limited liability partnership, association, joint-stock company, trust, unincorporated organization, government entity or political subdivision thereof, or organization recognized as a legal entity by law in the United States or Canada.

D. "Related Person" of an individual means all of the following: an individual's spouse, domestic partner, parents (including step-parents and in-laws), children (including step-children and in-laws), and siblings (including step-siblings and in-laws).

E. "Trustee" means a member of the Developmental Board of Trustees.

II. GENERAL STATEMENT.

A. The Corporation expects all Corporate Personnel to conduct business on behalf of the Corporation with integrity and high ethical standards. These Conduct Rules and the bylaws of the Corporation set forth guidelines for all Corporate Personnel to follow.

B. In general, Corporate Personnel should recognize and avoid conduct or activities that involve or might appear to involve a conflict of interest. Although it is impossible to list every circumstance that may suggest a possibility of a conflict of interest, some guidelines are as follows:

1. Corporate Personnel must not use any position with the Corporation for personal, private gain or benefit. In addition, Corporate Personnel may not use nonpublic information obtained in connection with their

duties or services to the Corporation to the detriment of the Corporation or for their direct or indirect personal gain or advantage or for the personal gain or advantage of any other Person, including, but not limited to, a Related Person of a Trustee or Corporate Personnel.

2. Corporate Personnel should avoid any action that might result in or create the appearance of inappropriate preferential treatment of any Trustee or Corporate Personnel, or any Related Person of any Trustee or Corporate Personnel.

3. Corporate Personnel may not at any time disclose any confidential or commercially sensitive information or trade secrets of the Corporation or that the Corporation obtains from third parties, except as and to the extent authorized by the Corporation's bylaws and any other rules of the Corporation.

4. Corporate Personnel should not engage in conduct or activities that conflict or are inconsistent with any activity of the Corporation or that would cause a reasonable person to believe the Corporate Personnel's judgment, loyalty, or objectivity might be influenced in a way that is adverse to the interests of the Corporation.

5. Corporate Personnel should take care to avoid adversely affecting the public's confidence in the integrity or the reputation of the Corporation. Corporate Personnel should be able to justify and withstand public scrutiny of their conduct and activities.

6. Corporate Personnel who serve on the boards of other entities (whether for-profit or nonprofit) must be meticulous in observing the rules of separate loyalty.

C. In considering the guidelines set forth in these Conduct Rules and the Corporation's bylaws, Corporate Personnel must remember that the relationships of their business associates, family, friends, and other Persons may give rise to a potential conflict of interest even if Corporate Personnel are not involved directly. A potential conflict can exist when the parties in the relationship give or receive, or could reasonably be perceived to give or receive, unfair advantage or preferential treatment because of the relationship. No Corporate Personnel should have a direct or indirect interest in or relationship with any outside Person or organization that might affect (or that might reasonably be perceived by others as affecting) the objectivity or independence of their judgment or conduct in carrying out their duties to the Corporation.

D. Corporate Personnel should be aware that even the appearance of a conflict of interest could harm the Corporation, and they should always try to avoid giving an appearance of impropriety. When in doubt, Corporate Personnel should disclose the circumstances to their supervisor or the President of the Corporation and

obtain approval in accordance with the procedures set forth in these Conduct Rules and the Corporation's bylaws.

III. GENERAL CONFLICT-OF-INTEREST REQUIREMENTS.

A. Corporate Personnel must comply with all laws and regulations applicable to the conduct of the business of the Corporation, all policies established by the Interim or Developmental Board of Trustees, and these Conduct Rules. Corporate Personnel who become aware of any illegal conduct on the part of any other Corporate Personnel, or any conduct that is otherwise inconsistent with the requirements of these Conduct Rules, must promptly report such conduct to their supervisor or the President of the Corporation.

B. Corporate Personnel must not put themselves in a position in which their personal interests and those of the Corporation might be in conflict or that might interfere with their ability to perform their job as well as possible.

C. Corporate Personnel may not use any Corporation property or services for personal gain and may not remove or dispose of the materials, supplies, or equipment of the Corporation without proper authority.

D. Corporate Personnel and their Related Persons may not accept any form of gift, gratuity, or entertainment that would tend to affect or give the appearance of affecting their judgment in the performance of their duties; provided, however, that Corporate Personnel may accept (i) items such as food, refreshments, and entertainment in the course of a meal, theater event, sports event, or social event, and (ii) noncash gifts of a nominal value, such as pens, pencils, notepads, calendars, and other noncash gifts received for a special occasion, in each case of a value not exceeding \$250 (U.S.) per source per year.

E. Corporate Personnel may not use funds or resources of the Corporation in support of any political party or candidate for elected office. Corporate Personnel may not use their position, authority, or influence with the Corporation for the purpose of affecting the result of an election or a nomination for a party for public office. Corporate Personnel may not directly or indirectly coerce, attempt to coerce, command, or advise another officer or employee to pay, lend, or contribute anything of value or to contribute personal services to a party, committee, organization, agency, or person for political purposes.

F. Corporate Personnel with responsibility to initiate or modify entries in the Corporation's accounting records must perform their duties with the Corporation's management's approval and in conformance with the Corporation's accounting policies and procedures.

G. Corporate Personnel may not, except as may be allowed by a recognized legal privilege or appropriate assertion of confidentiality, withhold information from or

give false or misleading information to anyone conducting duly authorized investigations or audits of the Corporation.

IV. IMPLEMENTATION.

A. The Corporation will direct all Corporate Personnel to comply with applicable law and with these Conduct Rules. The Corporation will maintain reasonable means for assessing and monitoring all Corporate Personnel to ensure such compliance. The Corporation will instruct all Corporate Personnel to contact the Corporation's designated compliance officer if they have any questions regarding applicable law or these Conduct Rules.

B. The Corporation will distribute copies of these Conduct Rules to all Corporate Personnel. Copies of these Conduct Rules will be provided to any new Corporate Personnel as part of their orientation.

C. The Developmental Board of Trustees may periodically evaluate the Corporation's experience with respect to employee conduct and compliance with these Conduct Rules and may revise these Conduct Rules, as well as any procedures associated with them, as it deems necessary or appropriate.

D. All Corporate Personnel are subject to discipline for failure to comply with any applicable law or for failure to comply with these Conduct Rules. Discipline may take the form of reprimand, suspension without pay, limitation in the scope of responsibilities, termination, or such other disciplinary action as is permitted by applicable law, in accordance with policies approved by the Developmental Board of Trustees.

E. Nothing in these Conduct Rules will in any way limit the Corporation's ability to hire, fire, promote, demote, discipline, or otherwise take employment-related action with respect to its Corporate Personnel.

*December 10, 2004*

**EXHIBIT B1**

**CONDUCT RULES**

**FOR INTERIM BOARD OF TRUSTEES**

These Conduct Rules for the members of the Interim Board of Trustees of the Corporation are as follows:

The Corporation expects all Trustees of the Corporation to conduct business on behalf of the Corporation with integrity and high ethical standards. All members of the Interim Board of Trustees should, at all times in their capacities as Trustees, (i) comply with the Corporation's bylaws and Board policies and (ii) carry out their fiduciary duties as trustees of a nonprofit corporation under Washington law.

**EXHIBIT B2**  
**CONDUCT RULES FOR**  
**DEVELOPMENTAL BOARD OF TRUSTEES**

These Conduct Rules for the members of the Developmental Board of Trustees of the Corporation are as follows:

I. DEFINITIONS. For purposes of these Conduct Rules, the following terms and definitions shall apply:

A. "Affiliate" of a "Person" (as defined below) means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of these Conduct Rules, in determining whether one Person controls another Person, without limitation, the direct or indirect ownership or control of or power to vote five percent (5%) or more of the outstanding voting securities of a corporation shall be deemed to constitute control of such corporation.

B. "Corporate Personnel" means each and all of the officers, employees, and substantially full-time consultants and contractors of the Corporation.

C. "Person" means an individual, corporation, cooperative corporation, municipal corporation, quasi-municipal corporation, limited liability company, mutual association, partnership, limited partnership, limited liability partnership, association, joint-stock company, trust, unincorporated organization, government entity or political subdivision thereof, or organization recognized as a legal entity by law in the United States or Canada.

D. "Related Person" of an individual means all of the following: an individual's spouse, domestic partner, parents (including step-parents and in-laws), children (including step-children and in-laws), and siblings (including step-siblings and in-laws).

II. GENERAL STATEMENT.

A. The Corporation expects all Trustees of the Corporation to conduct business on behalf of the Corporation with integrity and high ethical standards. These Conduct Rules and the bylaws of the Corporation set forth guidelines for all Trustees to follow.

B. In general, Trustees should recognize and avoid conduct or activities that involve or might appear to involve a conflict of interest. Although it is impossible to list every circumstance that may suggest a possibility of a conflict of interest, some guidelines are as follows:

1. Trustees must not use any position with the Corporation for personal, private gain or benefit. In addition, Trustees may not use nonpublic information obtained in connection with their duties or service to the Corporation to the detriment of the Corporation or for their direct or indirect personal gain or advantage or for the personal gain or advantage of any other Person, including, but not limited to, a Related Person of a Trustee or Corporate Personnel.

2. Trustees should avoid any action that might result in or create the appearance of inappropriate preferential treatment of any Trustee or Corporate Personnel, or any Related Person of any Trustee or Corporate Personnel.

3. Trustees may not at any time disclose any confidential or commercially sensitive information or trade secrets of the Corporation or that the Corporation obtains from third parties, except as and to the extent authorized by the Corporation's bylaws and any other rules of the Corporation.

4. A Trustee should not engage in conduct or activities that conflict or are inconsistent with any activity of the Corporation or that would cause a reasonable person to believe that the Trustee's judgment, loyalty, or objectivity might be influenced in a way that is adverse to the interests of the Corporation.

5. Trustees should take care to avoid adversely affecting the public's confidence in the integrity or the reputation of the Corporation. Trustees should be able to justify and withstand public scrutiny of their conduct and activities.

6. Trustees who serve on the boards of other entities (whether for-profit or nonprofit) must be meticulous in observing the rules of separate loyalty.

C. In considering the guidelines set forth in these Conduct Rules and the Corporation's bylaws, a Trustee must remember that the relationships of his or her business associates, family, friends, and other Persons may give rise to a potential conflict of interest even if the Trustee himself or herself is not involved directly. A potential conflict can exist when the parties in the relationship give or receive, or could reasonably be perceived to give or receive, unfair advantage or preferential treatment because of the relationship. No Trustee should have a direct or indirect interest in or relationship with any outside Person or organization that might affect (or that might reasonably be perceived by others as affecting) the objectivity or independence of the Trustee's judgment or conduct in carrying out his or her duties to the Corporation.

D. Trustees should be aware that even the appearance of a conflict of interest could harm the Corporation, and they should always try to avoid giving an appearance of impropriety. When in doubt, Trustees should disclose the circumstances to their fellow Trustees and follow the applicable procedures set forth in these Conduct Rules and the Corporation's bylaws.

### III. GENERAL CONFLICT-OF-INTEREST REQUIREMENTS.

A. Each Trustee must comply with all laws and regulations applicable to the conduct of the business of the Corporation, all policies established by the Developmental Board of Trustees, and these Conduct Rules. Any Trustee who becomes aware of any illegal conduct on the part of any other Trustee, or any conduct that is otherwise inconsistent with the requirements of these Conduct Rules, must promptly report such conduct to the Board of Trustees.

B. No Trustee may use any Corporation property or services for personal gain or remove or dispose of the materials, supplies, or equipment of the Corporation without proper authority.

C. No Trustee or Related Person of any Trustee may accept any form of gift, gratuity, or entertainment that would tend to affect or give the appearance of affecting his or her judgment in the performance of his or her duties; provided, however, that a Trustee may accept (i) items such as food, refreshments, and entertainment in the course of a meal, theater event, sports event, or social event and (ii) noncash gifts of a nominal value such as pens, pencils, notepads, calendars, and other noncash gifts received for a special occasion, in each case of a value not exceeding \$250 (U.S.) per source per year.

D. No Trustee may solicit or attempt to solicit for employment any individual who is then an employee of the Corporation; induce or attempt to induce any such employee to terminate his or her employment with the Corporation; take any other action that might reasonably interfere with or damage the Corporation's business opportunities or business relationships with its employees, lenders, creditors, customers, or other Persons with which the Corporation conducts business; or otherwise violate the Trustee's duty of loyalty to the Corporation.

E. Except as may be allowed by a recognized legal privilege or appropriate assertion of confidentiality, no Trustee may withhold information from or give false or misleading information to anyone conducting duly authorized investigations or audits of the Corporation.

### IV. IMPLEMENTATION.

A. Individuals with certain relationships are prohibited from serving on the Developmental Board of Trustees. See Section 7.10 of the Corporation's bylaws. If any Trustee, or any Related Person of a Trustee, has a direct or indirect beneficial or other interest in, or relationship with, any Person (or any Affiliate of any Person) with which the Corporation transacts (or proposes to transact) business, the Trustee must fully disclose to the Board of Trustees the existence and nature of such interest or relationship and all applicable facts known to the Trustee that an ordinarily prudent person would reasonably believe to be material to a judgment about whether to proceed with the transaction. If the transaction is sufficiently material to require action by the Board of Trustees or one of its committees, any Trustee having a direct or indirect interest or

*December 10, 2004*

relationship must refrain from voting on the matter, and all applicable action shall be undertaken in accordance with the Corporation's bylaws and applicable state law governing "interested" or "self-dealing" transactions involving nonprofit corporations.

B. Trustees must comply with applicable law. The Developmental Board of Trustees will maintain reasonable means for assessing and monitoring all Trustees to ensure such compliance. Trustees may consult counsel for the Corporation if they have any questions regarding applicable law or these Conduct Rules. Any Trustee who received a written opinion from counsel for the Corporation is entitled to rely on that opinion.

C. The Corporation will distribute a copy of these Conduct Rules to each of the Corporation's Trustees upon his or her election to the Developmental Board of Trustees and not less often than once a year thereafter. All Trustees must complete an annual disclosure questionnaire regarding compliance with the Corporation's bylaws and the provisions of these Conduct Rules.

D. The Developmental Board of Trustees may, by approval of two-thirds of its members, remove from the Developmental Board of Trustees any Trustee who fails to comply with any applicable law or fails to comply with any provision of these Conduct Rules.

## EXHIBIT C – Regional Representatives Group

Category	Principal-Alternate	Name	Affiliation
Affiliated Tribes	Principal	Margie Schaff	ATNI
Alberta Provincial/Regulatory	Principal	Kellan Fluckiger	Alberta DOE
	Alternate	Warren Frost	Alberta DOE
BC Provincial/Regulatory	Principal	Nadine Nichols	British Columbia Utility Commission
	Alternate	Shelley Murphy	Ministry of Energy & Mines
Canada	Principal	Vipin Prasad	Alberta Electric System Operator
	Alternate	Neil Millar	Alberta Electric System Operator
CREPC/NWPCC	Principal	Wally Gibson	NWPCC
Direct Service Industrial Customers	Principal	Don Schoenbeck	DSI (RCS)
	Alternate	Ray Bliven	DSI (RCS)
Environmental Community	Principal	Steve Weiss	NW Energy Coalition
FERC Jurisdictional Rural Co-ops	Principal	Curtis Winterfeld	Deseret Power
	Alternate	Jim Tucker	Deseret Power
Independent Power Producers/QF	Principal	Michael Alcantar	Alcantar & Kahl
	Alternate	Don Brookhyser	Alcantar & Kahl
Independent Power Producers/Marketers	Principal	Bob Kahn	NW IPP Coalition
	Alternate	Alan Davis	For Power Marketer Coalition
Industrial Customers	Principal	Ken Canon	ICNU
	Alternate	Linc Wolverton	ICNU
Non-BPA TDUs	Principal	Marshall Empey	Utah Assoc. Muni. Power Systems
	Alternate	Tim Shuba	Shea-Gardner for UAMPS
Public Generators	Principal	TBD	Public Generating Pool (PGP)
	Alternate	Lon Peters	PGP
Renewable Resources	Principal	Tom Foley	Renewable NW Project
	Alternate	Natalie McIntire	Renewable NW Project
Residential Customers	Principal	Matt Steuerwalt	Washington AG Office
	Alternate	Jason Eisdorfer	Citizens' Utility Board of Oregon
Rural Co-ops	Principal	Aleka Scott	Pacific NW Generating Co-op
	Alternate	Doug Brawley	Pacific NW Generating Co-op
Seattle City Light	Principal	Bill Gaines	Seattle City Light
	Alternate	TBD	
State of Idaho	Principal	Lou Ann Westerfield	Idaho PUC
State of Montana	Principal	Marla Larson	Montana PSC
	Alternate	Larry Nordell	Montana Consumer Counsel
State of Nevada	Principal	Grant Siwinski	Nevada PUC
State of Oregon	Principal	Stefan Brown	Oregon PUC
	Alternate	Phil Carver	Oregon Office of Energy
State of Utah	Principal	George Compton	Utah DPU
State of Washington	Principal	Dick Byers	Washington UTC
	Alternate	Alan Buckley	Washington UTC
State of Wyoming	Principal	Steve Ellenbecker	Wyoming PSC
TDU/BPA Customers	Principal	John Saven	NW Requirements Utilities
	Alternate	Susan Ackerman	NW Requirements Utilities
Transmission Scheduling Utilities	Principal	Ray Nelson	PRM Utilities
	Alternate	Loren Baker	PRM Utilities
Urban/Westside TDUs	Principal	Terry Mundorf	Western Public Agencies Group
Filing Utilities	Principal	Randy Cloward	Avista Corporation
	Alternate	Jeff Schlect	Avista Corporation
	Principal	Yakout Mansour	B.C. Transmission Corporation
	Alternate	Cameron Lusztig	B.C. Transmission Corporation
	Principal	Allen Burns	Bonneville Power Administration
	Alternate	Syd Berwager	Bonneville Power Administration
	Principal	Chuck Durick	Idaho Power Company
	Alternate	TBD	Idaho Power Company
	Principal	Ted Williams	NorthWestern Energy
	Alternate	John Canavan	NorthWestern Energy
	Principal	John Carr	PacifiCorp
	Alternate	TBD	PacifiCorp
	Principal	Frank Afranji	Portland General Electric
	Alternate	George Hutcherson	Portland General Electric
	Principal	Kimberly Harris	Puget Sound Energy
	Alternate	Dave Hoff	Puget Sound Energy
	Principal	Paul Schmidt	Sierra Pacific/Nevada Power
	Alternate	Mark Backus	Sierra Pacific/Nevada Power
Coordinating Team	RRG Coordinator	Bud Krogh	Krogh & Leonard

*December 10, 2004*

**EXHIBIT D**  
**OPERATIONAL BYLAWS**

**GRID WEST DEVELOPMENTAL BYLAWS**